

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

Criminal No. 07-31 Erie

MICHAEL THOMAS JOYCE,
Defendant.

Transcript of Jury Trial Proceedings on Wednesday, October
22, 2008, United States District Court, Pittsburgh,
Pennsylvania, before Maurice B. Cohill, Senior District Judge.

APPEARANCES:

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Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 (Proceedings held in open court; Wednesday, October 22, 2008.)

2 THE COURT: First of all, let me say you're a hearty
3 band of warriors. You did great yesterday and we appreciate,
4 the lawyers and I, all appreciate your patience.

5 We got through what I consider to be the toughest part
6 of the voir dire.

7 Now, from this group, the lawyers are going to be
8 choosing 16 jurors to serve in the trial of this case which will
9 begin as soon as the jury is chosen.

10 So, with that, lawyers, you may begin your choices.

11 (Whereupon, there was a pause in the proceedings.)

12 THE CLERK: As I call out your name, will the
13 following jurors in the jury box please step down and take a
14 seat in the back of the courtroom.

15 David Pezzuolo.

16 Maureen Krautz.

17 Mark Marecic.

18 Diane Kubala.

19 Josiah Kovac.

20 I will now seat the twelve jurors and two
21 alternates.

22 Robert Nystrom, Juror No. 133, juror seat No. 1.

23 No. 144, Mary Jean Johnson, juror seat No. 2.

24 No. 13, Susan Saxman, juror seat No. 3.

25 No. 95, Philip Kushnar, juror seat No. 4.

1 No. 90 Christine Cole, juror seat No. 5.
2 No. 202, Michael Jones, juror seat No. 6.
3 No. 161, Geraldine Murton, juror seat No. 7.
4 No. 124, Paul Hovanec, juror seat No. 8.
5 No. 17, Vincent Barbi, juror seat No. 9.
6 No. 49, Ashley Schuring, seat No. 10.
7 No. 40, Annemarie Frick, juror seat No. 11.
8 No. 33, Gregory Anker, juror seat No. 12.
9 No. 165, Mary Ann Schmertz, alternate seat No. 1.
10 No. 129, William Jackson, alternate seat No. 2.
11 No. 66, Stephen Cargo, alternate seat No. 3.
12 No. 51, Ralph Giordano, alternate seat No. 4.

13 THE COURT: We will administer the oath.

14 (Administration of the oath.)

15 THE COURT: Well, ladies and gentlemen who are not
16 selected for this jury, I certainly want to thank you on
17 behalf of everyone involved in this. As I said when I came in
18 this morning, you were very patient and courteous yesterday
19 and we all appreciate your kind attention.

20 I guess those ladies and gentlemen that aren't
21 going to be in the jury should report back to the third floor.
22 If you'll go down to the third floor to the jury room.

23 Ladies and gentlemen of the jury, this is Richard,
24 and that's Katie, and they're going to be your den mother and
25 den father during the case of the trial. Right now we'll take

1 a break until ten-thirty and Richard and Katie will show you
2 folks where our jury room is from now on. That's where you
3 should be when you're not in the courtroom.

4 (Discussion in chambers.)

5 THE COURT: I just wanted to go over with you a few
6 things here before we start.

7 What I'm going to do now is give them a preliminary
8 charge, which I think Richard gave to everybody. As I
9 understand, it's now a seven-count indictment.

10 MR. TRABOLD: Eight -- it used to be nine -- two
11 counts of mail fraud, six counts of money laundering.

12 THE COURT: It's an eight-count indictment charging
13 three separate instances of mail fraud.

14 MR. TRABOLD: Two now separate instances of mail
15 fraud occurring in August and November of 2002 and six
16 separate instances of engaging in monetary transactions and
17 property derived from unlawful activity occurring in November
18 2002, February, March and April of 2003.

19 Now, how much of this indictment should I read to
20 them, do you think? I had thought about just reading "on or
21 about the date specified below" and explain to them what is
22 going to be specified below. I'd read: Counts One and Three
23 state on or about the dates specified below, in the Western
24 District of Pennsylvania, the defendant, so forth, for the
25 purpose of executing the aforesaid scheme and artifice to

1 defraud, and in attempting to do so, did knowingly cause to be
2 delivered by the United States mail the mail matter more
3 particularly set forth below, each such use of the United
4 States mail being a separate count of this indictment.

5 I would say Count One, it was mailed on or about
6 August 26, 2002, from Mr. Joyce to Attorney Ted G. Miller of
7 the Erie Insurance Group; it was a note with an enclosure.

8 And then the third count -- we don't have a second
9 count here -- the third count was mail matter mailed on
10 November 15, 2002, from Mr. Joyce to Ronald G. Habursky, a
11 litigation specialist with the Erie Insurance Group.

12 Those are the first two counts.

13 And then I would say that Title 18 of the United
14 States Code, 1341, the statute upon which Counts One through
15 Three of the indictment are based states in relevant part, and
16 I read the relevant part of 1341.

17 Then Counts Four through Nine are the so-called
18 money laundering counts. On or about the date specified, then
19 I would read that, and then down to Count Four on 11-27, I
20 would just go through the counts pretty much like that, all
21 said to be in violation of Title 18, Sections 1957 and 2. And
22 then I would read 1957. We weren't going to read two, but I
23 can if you want. That's the one, that two is the one that
24 says if you -- if you're involved even peripherally, you're
25 still guilty of whatever.

1 Is it okay if I don't read that?

2 MR. FRIEDMAN: Sure, there's no need to read that.

3 THE COURT: In every criminal case, the party to
4 the case -- you have the rest of that preliminary charge.

5 So does that sound all right?

6 MR. FRIEDMAN: That sounds fine.

7 MR. TRABOLD: Yes.

8 THE COURT: Now, there was some discussion a few
9 days ago about who can sit at counsel table.

10 MR. TRABOLD: Your Honor, we're asking you to
11 reconsider that simply because we don't think there's any
12 valid basis under Rule 615 to exclude the second agent. This
13 is a complex case that's going to take a number of weeks --

14 THE COURT: I was going to look it up. We got done
15 sooner than I thought. I was going to look it up.

16 MR. LEIGHT: Rule 615.

17 THE COURT: Exclusion of Witnesses. At the request
18 of a party, the court shall order witnesses excluded so they
19 cannot hear the testimony of other witnesses, and it may make
20 the order of its own motion. This rule does not authorize
21 exclusion of (1) a party who is a natural person, or (2) an
22 officer or employee of a party which is not a natural person
23 designated as its representative by the attorney, or (3) a
24 person whose presence is shown by a party to be essential to
25 the presentation of the party's cause, or (4) a person

1 authorized by statute to be present.

2 So I suppose you're saying No. 3, a person whose
3 presence is shown by a party to be essential to the
4 presentation of the case?

5 MR. TRABOLD: Sure. The cases say that this
6 exception falls under either (2) or (3), Your Honor.

7 MR. LEIGHT: Your Honor, if I may be heard. No. 2
8 says: An officer or employee of a party which is not a
9 natural person.

10 That's the United States of America, obviously,
11 they're not a natural person. So, it says officer or
12 employee; not plural, singular.

13 In addition, it says, or a person. So it would
14 imply that if it's not a natural person, they can have a
15 representative or a person whose presence is shown, not both.
16 So the government can't have (2) and (3), they're either
17 entitled to an employee or an officer, which would be the
18 second exception.

19 There's case law. I have cases here. The Fourth
20 Circuit has ruled that it was an error for a court to allow
21 two agents in a courtroom. They eventually said it was
22 harmless error.

23 But the Third Circuit has, I think the Third
24 Circuit case was Drummond, and in that case, the facts were a
25 little bit different. The defense wanted the agent to testify

1 first before being permitted in the court and the court said
2 he couldn't order that. The Third Circuit said you couldn't
3 order the government to call their witnesses in an order, that
4 way, they allowed the agent, one agent to stay in.

5 So, again, Your Honor, I think it's highly
6 prejudicial.

7 In addition, one of the juror questionnaires,
8 Questionnaire 45 said: In fact, if the IRS and FBI both
9 brought charges, the person must be guilty.

10 So, again, that gives the impression to the jury
11 that this must be a very serious case because it requires two
12 governmental agencies to prosecute this individual.

13 So that would be our position.

14 MR. TRABOLD: Judge, if I may be heard, the
15 Drummond case that counsel references the Court specifically
16 allowed two case agents to sit at the table. That's a Third
17 Circuit case. There's absolutely no prejudice to the
18 defendant in this case by allowing these two case agents to
19 sit in.

20 THE COURT: Are they both going to testify?

21 MR. TRABOLD: They are both going to testify, but
22 they are both going to testify -- they both handled kind of
23 half of the case. This is a lengthy, complex case and in a
24 tax case you had recently with Ms. Sanner up in Erie, you
25 allowed two case agents to sit in.

1 THE COURT: That was without objection, of course.

2 MR. TRABOLD: Sure. But there's no prejudice to
3 the defendant if you let these two case agents sit in on this
4 complex case, which is going to take a number of weeks, which
5 is going to be relatively document intensive. And the Third
6 Circuit is specifically allowed in the Drummond case and the
7 Second Circuit and the Sixth Circuits have specifically
8 allowed the presence of two case agents, especially in cases
9 that are document intensive and relatively complex like this
10 case.

11 The jurors have already seen the case agents
12 sitting out there and been told that it is a case investigated
13 by the FBI and IRS, so there's no prejudice to the defendant
14 by having them sit there. As well as the fact that both
15 counsel are going to have their paralegals who, of course,
16 aren't witnesses, but they're going to be there sitting at
17 counsel table assisting them in the presentation of the case.
18 It only seems fair to me that I be allowed to have case agents
19 do the same thing.

20 MR. LEIGHT: I would suggest a compromise. We
21 would be willing to allow two case agents in the room if at
22 the conclusion of each day the government would tell us what
23 witnesses they're calling next. That would make the trial
24 move faster.

25 THE COURT: We normally do that anyway.

1 MR. LEIGHT: We have asked and they said no.

2 MR. TRABOLD: I normally don't do that.

3 THE COURT: You always get Jencks material.

4 MR. TRABOLD: We already turned over the Jencks
5 material.

6 MR. LEIGHT: We got 600 pages of testimony Friday
7 afternoon for 37 individuals.

8 MR. TRABOLD: I normally don't do that.

9 THE COURT: I'm going to let the agents both sit at
10 the table. I think you ought to give them -- that's up to
11 you, but I think you ought to give them the names of the
12 witnesses the night before. It's going to make it go faster.

13 MR. LEIGHT: Will you do that?

14 MS. SANNER: It's going to be somewhat difficult in
15 this case with scheduling.

16 MR. TRABOLD: That is my concern. We're obviously
17 pulling these witnesses down from Erie. Depending on how we
18 go and where we go --

19 THE COURT: Tell him the day before. You'll know
20 the day before who is coming.

21 MR. TRABOLD: I will make every effort to do that.

22 MR. LEIGHT: Please tell us. It makes it so much
23 easier. It's fundamental fairness.

24 MR. TRABOLD: That's fine, if I can be told the
25 defense witnesses that they're going to call the day before.

1 MR. LEIGHT: I don't have a problem with that.

2 THE COURT: Anything else before we go?

3 MR. FRIEDMAN: The only thing -- this can be off
4 the record.

5 (Discussion off the record.)

6 (Open court.)

7 THE COURT: Ladies and gentlemen, what I'm going to
8 do now is give you sort of a preliminary charge to tell you
9 what to expect during this trial.

10 As you know by now, you have been sworn in the case
11 of the United States of America against Michael Thomas Joyce.
12 What I intend to say now is simply an introduction to the
13 trial of the case. It's not a substitute for the detailed
14 instructions about the law and the evidence that I'll give you
15 at the end of the trial, and sometimes during the trial some
16 question or legal question arises and I might have to give you
17 an explanation during the trial, but most of my detailed
18 instructions will be at the end.

19 This is a criminal case. It's commenced by the
20 United States, which I may sometimes refer to as the
21 prosecution or the government. And the defendant here is
22 Michael Thomas Joyce.

23 The case is based on an eight-count federal grand
24 jury indictment which charges him with two separate instances
25 of mail fraud occurring in August and November of 2002, and

1 six separate instances of engaging in what are called monetary
2 transactions in property derived from unlawful activity
3 occurring in November 2002 and February, March and April of
4 2003.

5 I'm not going to read the whole indictment to you,
6 but I do want to give you these essential parts of it. Count
7 One -- there's no Count Two here -- Counts One and Three are
8 the so-called mail fraud counts. That states that on or about
9 the dates -- you'll get a copy of this at the end of the
10 trial, by the way, when you begin your deliberations.

11 Anyway, Counts One and Three briefly say: On or
12 about the dates specified below in the Western District of
13 Pennsylvania, the defendant, Michael Thomas Joyce, for the
14 purpose of executing the aforesaid scheme -- the indictment
15 has described scheme a little bit -- for the purpose of
16 executing the aforesaid scheme and artifice to defraud, and in
17 attempting to do so, did knowingly cause to be delivered by
18 the United States mail the mail matter, more particularly set
19 forth below, each such use of the United States mail being a
20 separate count of this indictment.

21 And then Count One. It was a mailing on August 26,
22 2002, and it came from Mr. Joyce to Attorney Ted G. Miller of
23 the Erie Insurance Group. It was a note with an enclosure.

24 Then Count Three occurred on November 15, 2002, and
25 that was from Mr. Joyce to Ronald G. Habursky, the litigation

1 specialist at Erie Insurance Group. That was a letter. All
2 said to be in violation of 18 United States Code, Section
3 1341, and 2.

4 That particular section of the code, 18 United
5 States Code, Section 1341 says this: Whoever having devised
6 or intending to devise any scheme or artifice to defraud, for
7 the purpose of executing such scheme or artifice or attempting
8 to do so, knowingly causes to be delivered by the United
9 States mail according to the direction thereon any such matter
10 or thing shall be guilty of an offense against the United
11 States.

12 Now, Counts Four through Nine are so-called money
13 laundering counts. In those counts -- to those counts, the
14 indictment says this:

15 On or about the date specified below in the Western
16 District of Pennsylvania, and elsewhere, the defendant,
17 Michael Thomas Joyce, did knowingly engage and attempt to
18 engage in the following monetary transactions affecting
19 interstate commerce in criminally derived property with a
20 value greater than \$10,000, which property was derived from
21 specified unlawful activity, in that the defendant, Michael
22 Thomas Joyce, engaged in the following transactions, knowing
23 that the funds were derived from a criminal offense, when, in
24 fact, said funds were derived from mail fraud, each such
25 transaction constituting a separate count of this indictment.

1 Count Four states that on November 27, 2002, he
2 made a \$300,000 initial deposit into a TD Ameritrade
3 individual brokerage account.

4 Count Five, November 27, 2002, \$18,058.02 payment
5 to his line of credit account at National City Bank.

6 Count Six, February 14, 2002, \$20,000 deposit to
7 Sue Sullo Realtors for the purchase of property located in
8 Millcreek Township, Pennsylvania.

9 Count Seven, March 10, 2003, \$18,770.75 payment to
10 Liberty Harley Davidson, 32 East Cuyahoga Falls Boulevard,
11 Akron, Ohio, for the purchase of a motorcycle.

12 Count Eight, March 19, 2003, \$94,537.74 down
13 payment to Select Settlement, Inc. for the purchase of
14 property located in Millcreek Township, Pennsylvania.

15 Count Nine, April 15, 2004, \$27,500 down payment to
16 Dunkirk Aviation, New York, toward the purchase of a 1978
17 Cessna 206 airplane.

18 Now this is all said to be in violation of 18
19 United States Code, Section 1957 and 2.

20 1957, the statute states that: Whoever knowingly
21 engages or attempts to engage in a monetary transaction in
22 criminally derived property of a value greater than \$10,000
23 and is derived from specified unlawful activity shall be
24 guilty of an offense against the United States.

25 Now, in essence, those are the charges against

1 Mr. Joyce.

2 Now, I want to tell you, elaborate a little bit
3 about the law and how the trial works.

4 You always have to keep in mind that in every
5 criminal case, the government is merely a party to the case.
6 That was emphasized during the jury selection process here.
7 But the government is merely a party to the case, no more and
8 no less. There's no presumption that just because the
9 government is bringing the action that the defendant must be
10 guilty. On the contrary, the government always has the burden
11 throughout the trial of proving the guilt of the defendant
12 beyond a reasonable doubt because he's pleaded not guilty.
13 Questions of fact will be presented at the trial and you have
14 been chosen as jurors to determine those facts.

15 The indictment simply sets out the charges. It's
16 not evidence against the defendant and the government has the
17 burden of proving each of the essential elements of the
18 indictment beyond a reasonable doubt. A reasonable doubt is a
19 doubt based upon reason and common sense, the kind of doubt
20 that would make a reasonable person hesitate to act. Proof
21 beyond a reasonable doubt must, therefore, be proof of such a
22 convincing character that a reasonable person would not
23 hesitate to rely and act upon it in the most important of that
24 person's own affairs. The purpose of this trial is to
25 determine whether the government can meet its burden to show

1 that the defendant is guilty beyond a reasonable doubt.

2 Now, the defendant in this case is charged with
3 several offenses and each offense is charged in a separate
4 count of the indictment. The number of offenses charged is
5 not evidence of guilt and this should not influence your
6 decision in any way. You must separately consider the
7 evidence that relates to such offense and you must return a
8 separate verdict for each offense. For each offense charged,
9 you must decide whether the government has proved beyond a
10 reasonable doubt that the defendant is guilty of that
11 particular offense. Your decision on one offense, whether
12 guilty or not guilty, should not influence your decision on
13 any other offenses -- the other offenses charged. Each
14 offense should be considered separately. You'll be expected
15 to perform your duty of deciding the facts without bias for
16 either the defendant or the government. The law does not
17 permit jurors to be governed by sympathy or prejudice or
18 public opinion. Both the defendant and the government expect
19 that you will consider all of the evidence impartially, follow
20 the law as I state it and reach a just verdict regardless of
21 the consequences.

22 Now, the trial will proceed in this order.

23 First, the parties may make an opening statement.
24 The government may make an opening statement at the beginning
25 of the case and the defendant, through his lawyer, may then

1 make an opening statement, or delay an opening statement until
2 the close of the government's case. What is said in those
3 opening statements is not evidence. The statements merely
4 serve to provide an introduction to the case.

5 Secondly, the government will then introduce
6 evidence in support of the charges contained in the
7 indictment.

8 Third, after the government has presented its
9 evidence, the defendant may present evidence, but a defendant
10 is never obligated to do so.

11 Fourth, at the conclusion of the evidence, then the
12 government will present an oral argument in support of its
13 side and the defendant will present an oral argument in
14 support of his side. Then after that, the government is
15 permitted to make a rebuttal. What is said in those closing
16 arguments is not evidence, just as what was said in the
17 opening statements is not evidence. The purpose of the
18 closing arguments is to present the parties' position as to
19 what the evidence shows and what conclusions may be drawn from
20 that evidence.

21 I'll then instruct you on the law, after which
22 you'll retire to consider your verdict. Your verdict must be
23 unanimous.

24 Under our system of criminal procedure, you, the
25 jurors, are the sole judges of the fact. There are really two

1 judges in the courtroom. I'm the judge with respect to the
2 law, what legal questions that arise, but you folks
3 collectively as a jury are the judge of the facts. It's up to
4 you to determine what the facts of the case are.

5 So, therefore, it's especially important that you
6 perform that duty carefully and conscientiously for ordinarily
7 there's no means of correcting an incorrect finding of fact by
8 the jury. You're going to be in that jury room by yourselves,
9 there's not going to be a court reporter there or any person
10 from the court, you'll be by yourselves, and, therefore, if
11 you made a mistake on the law, no one would ever know that and
12 that would be unfair to the parties in the case. Because of
13 that, it's obviously important that you hear all the testimony
14 and weigh it, give it fair weight. If at any time you do not
15 hear something, raise your hand and we'll have it repeated for
16 you.

17 As I said, you are the finders of the facts, but,
18 on the other hand, I instruct you that the law which you're to
19 consider is to be only the law as I give it to you. It's your
20 duty to follow that law even though you might disagree with
21 it, as I explain it. There's an important reason for this.
22 As I said, your deliberations will be secret. So if you were
23 to use a different law or some incorrect conclusion of law
24 from that which I give you, no one would ever be able to know
25 this and you would be committing an injustice to one of the

1 parties in the case.

2 So one of the things that is important for you
3 folks is to decide on the credibility, that is, the
4 believability of the witnesses who are going to testify.

5 Some of the ways by which you may judge the
6 credibility of a witness is the manner in which the witness
7 gives the testimony, the witness' appearance and attitude on
8 the stand, the reasonableness or unreasonableness of what the
9 witness says; the witness' means of knowing any facts; the
10 witness' interest in the outcome of the case; any feeling the
11 witness may have for or against one of the parties; the
12 witness' ability to remember or any previous contradictory
13 statements that the witness has made. Ultimately, you must
14 decide what weight you will give to the testimony of each of
15 the witnesses who have testified.

16 Some people think that the jury will have available
17 to it a copy of the transcript which our court reporter
18 records during the trial. That's just not so. You're
19 expected to use your own memories to recall what was said in
20 the testimony. During the trial, I am going to permit you to
21 take notes. Many courts don't permit note-taking by jurors,
22 but I'm going to permit that. A word of caution is in order.
23 There's often a tendency to attach undue important to matters
24 which one has written down. Some testimony which might be
25 considered unimportant at the time it's presented, and thus

1 not written down, might take on greater importance during the
2 trial in light of all the evidence presented. Therefore,
3 you're instructed that your notes are only a tool to aid your
4 individual memory. Above all, your memory should be your
5 greatest asset when it comes time to deliberate and render a
6 decision in this case.

7 When you leave at night, leave your notes in the
8 jury room. During the trial, any notes taken by any juror
9 concerning this case should not be disclosed to anyone other
10 than a fellow juror.

11 There will be occasions during the trial when
12 objections will be made to certain evidence presented or
13 questions asked. Keep in mind that an attorney has a duty to
14 object if that attorney believes that a question is improper
15 or that certain evidence should not be admitted. Unless there
16 is an objection, I don't have to make any ruling on the
17 evidence. Therefore, you should not hold it against either
18 side when there's an objection. At times I may sustain the
19 objection, or I may order that you disregard certain
20 testimony. Sometimes a witness will blurt out something from
21 the witness stand that's just improper in one way or another,
22 sometimes kind of scandalous. If I say disregard that
23 statement, I know that human reaction probably is somebody
24 will say, geez, the Judge said forget it, now that's the one
25 thing I'm going to remember, which is a human reaction, too,

1 but if I would tell you to disregard certain testimony and you
2 don't feel you can forget it, put it at least off in another
3 compartment of your mind and don't consider that in arriving
4 at your final verdict. You're expected to follow my
5 instructions on that and not consider any evidence to which an
6 objection has been sustained or which I've told you to
7 disregard.

8 From time to time there will be conferences over
9 here of what we call side-bar. That's when the attorneys and
10 I meet at the end of the bench to discuss some legal point.
11 Those conferences are held outside your hearing because -- not
12 because we're trying to withhold any evidence from you that
13 you ought to hear but rather to avoid mistakes. It's simply a
14 way of being sure that you have before you only legally
15 correct evidence on which to base your decision. I hope we
16 won't have too many conferences, but I'm sure there will be
17 some and I ask your patience in advance.

18 At times I may ask witness questions. If I do,
19 it's to bring out matters that I feel should be brought out
20 and not in any way to reveal my opinion about the facts or to
21 indicate the weight that I feel you should give the testimony
22 of a witness.

23 No one is permitted to talk to you about this case.
24 I don't even want you to talk to each other about it or
25 anybody else. By "anyone," I mean your wife, your husband,

1 your children, your parents, your relatives, your friends, no
2 one at all. I don't, as I said, I don't even want you to talk
3 to each other about it until after you've heard all the
4 evidence and until I give you my final charge on the law and
5 you begin your deliberations in the jury room. We have a good
6 reason for requiring this. Sometimes a juror might make up
7 his or her mind early in a case and talk to others about it
8 and perhaps later on in the trial, other evidence comes in and
9 now that juror might want to change his or her mind but
10 because that juror has already stated a position, then, again,
11 it's a human reaction, that person might be hesitant or
12 embarrassed to admit that he or she was wrong the first time
13 around. So, we just avoid that situation entirely by telling
14 you don't discuss the evidence with each other or anybody else
15 until after you've heard it all and until you've heard my
16 charge to you on the law. And then when you begin to
17 deliberate, of course, you should discuss it freely and openly
18 and just as long as you and your fellow jurors want to discuss
19 it.

20 I suspect there will be articles in the newspapers
21 or on the radio or television about this case. If there
22 should be, we ask you, please, don't read about it. Please
23 don't listen on the radio. Please don't watch it on TV. If
24 it comes up, we ask you to turn it down or turn it off. Here
25 again, I think the reason is fairly clear. You've taken an

1 oath to decide this case on the law as I give it to you and on
2 the evidence as you hear it in this courtroom. The parties
3 have a right to expect you to live up to that oath. If you
4 would talk to someone outside the courtroom or read someone
5 else's impression of what is going on here about either the
6 facts or the law, it just wouldn't be fair to anyone. You'd
7 be listening to excerpts or reading excerpts put together by
8 persons not having the same privilege of sitting throughout
9 the case as you do and who won't know as much about the case
10 as you will. So again we say avoid that situation by simply
11 not reading about it. If you want to see what is said in the
12 papers or whatever, get someone at home to cut the thing out
13 and save it for you until after the trial is over.

14 If, however, at any time during the trial you read
15 or hear something outside the courthouse that you think might
16 influence your decision, bring that to my attention
17 immediately. If anyone should attempt to discuss the case in
18 your presence, when, for example, you're standing in the
19 hallway or in the elevator or out on a street corner, then you
20 should immediately remove yourself from the range of hearing.
21 And if you feel that they're insisting on trying to talk to
22 you, you should advise me about that right away because it's a
23 very serious matter. The attorneys in this case are very
24 affable persons, but if they see you somewhere, they're not
25 going to chat with you because they're under my instructions

1 not to talk to you outside the courtroom under any
2 circumstances.

3 After the closing arguments, as I said, I'll
4 explain the law that applies to the case. When you retire,
5 you'll consider the law as I have given it to you, explained
6 it to you and then you will determine the facts and arrive at
7 your decision. It's for you to decide what conclusions you
8 will draw from the testimony and the evidence.

9 Now, as far as housekeeping goes, normally, as I
10 told you at the outset, we'll only be trying the case Monday
11 through Thursday of each week. No court on Friday. We'll
12 normally start at nine-thirty in the morning. My usual
13 routine is start at nine-thirty in the morning and work until
14 twelve-thirty, around noon, twelve-thirty, with a break
15 midmorning, and then we'll start again at quarter of two and
16 work until sometime between four-thirty and five, just trying
17 to stop at a logical stopping point with a mid afternoon
18 break. That will be generally our routine.

19 You have been assigned a very solemn and a very
20 important duty. It's one I'm sure you will accept and devote
21 your best conscientious and best efforts with all these
22 instructions in mind.

23 We'll now have the opening statement on behalf of
24 the government. When the actual testimony begins, we'll give
25 you pens and pads to take your notes. As I said, what you

1 hear at the beginning is not evidence, it's simply a statement
2 by the government where he expects, he or she expects the
3 trial to go.

4 MR. TRABOLD: Thank you, Your Honor.

5 May it please the Court and counsel, ladies and
6 gentlemen, this case is about this defendant's scheme to
7 defraud two insurance companies. The evidence in this case is
8 going to show that that was a scheme created in greed out of
9 his desire and need for more money and completed outright
10 lies, half truths and the omissions of obviously material
11 facts.

12 You're going to hear fairly soon as we begin this
13 case that on August 10, 2001, this defendant was involved in
14 an automobile accident. The accident occurs at this
15 intersection which is at West 12th Street and Asbury Road in
16 Millcreek Township, which is a suburb of Erie, Pennsylvania.
17 You can consider this intersection right here is the Erie
18 International Airport.

19 You may say to yourself, how can the Erie airport
20 possibly be an international airport, but I assure you,
21 there's at least one or two flights every ten years to Canada.

22 However, what you have here is north/south, Asbury
23 runs north/south, and West 12th Street is kind of a main
24 thoroughfare in Erie running east and west.

25 A woman by the name of Amber Cooper is on her way

1 to work. She's driving north on Asbury Road to go to work on
2 West 12th Street. She comes to this intersection. There's
3 kind of a merge lane to go onto West 12th Street. She's
4 parked here and in front of her is the defendant's vehicle.
5 She's driving a 1992 Ford Explorer. The defendant is driving
6 his 2001 Mercedes Benz. She stops behind him, comes to a full
7 stop. He stopped in front of her and they're both waiting in
8 that merge lane to get onto West 12th Street going east.

9 You're going to hear from her that she is kind of
10 looking back across the intersection to see if vehicles are
11 coming. And there's a vehicle that is coming and it's
12 traveling kind of quickly, but she believes that it's going to
13 stop. She thinks that the defendant is going to start moving
14 his vehicle out onto the road. She looks back once that
15 vehicle comes to a stop. She then begins to slowly move her
16 vehicle forward when she believes the defendant is moving his
17 vehicle forward. And there's an impact because he stops his
18 vehicle while she's beginning to inch forward.

19 She is going to tell you that in no uncertain terms
20 this accident happened when she was going no faster than two
21 to three miles an hour. And you're going to hear there's no
22 damage to her vehicle whatsoever. You're going to hear
23 there's slightly over \$2,700 worth of damage to the
24 defendant's vehicle. No police or ambulance are ever called.

25 What happens after this very minor impact? They

1 pull off to the side of kind of a lot next to the airport.
2 She gets out of her car in order to exchange information. The
3 defendant gets out of his car for the same purpose, to
4 exchange information.

5 You're going to hear from her that she doesn't
6 detect that he's injured in even the slightest regard. He
7 doesn't have any difficulty getting out of his car. He
8 doesn't say he's injured. All that he really says when he
9 identifies himself is, he identifies himself as Michael Joyce,
10 as in Judge Michael Joyce. She says to herself, kind of --
11 you're going to hear what she says during the course of this
12 trial is that I'm not from Erie, it didn't really register
13 with me, I didn't know who Michael Joyce was.

14 He tells nothing to her at all about being injured.
15 She observes no injuries. He gets back into his vehicle
16 without mentioning even the slightest thing about injuries,
17 she gets back into her vehicle and they both drive away.

18 The defendant's vehicle is drivable. Her vehicle
19 is completely unscathed. The accident she will tell you
20 happens at two to three miles an hour and certainly no more
21 than five. That is the accident that causes the damage to
22 this defendant's vehicle in this case. A two to three mile an
23 hour fender bender.

24 You're going to hear that what comes quite a bit
25 later are insurance claims by the defendant. He makes your

1 typical insurance claim for the repairs on his vehicle,
2 roughly a little bit over \$2,700. Ms. Cooper is insured by
3 State Farm Insurance and she has a policy limit of \$50,000.

4 In August of 2001, within approximately two or
5 three weeks after the accident, this defendant tells State
6 Farm Insurance that even though he's feeling a little pain
7 from the accident or he's a little bit sore, he is not going
8 to pursue a bodily injury claim. He tells the insurance
9 company that, State Farm that in 2001, in August.

10 He then does not begin to pursue a further claim
11 with State Farm until the summer of 2002. In July of 2002, he
12 then begins to pursue an insurance claim with State Farm.
13 You're going to hear evidence that on September 4, 2002, State
14 Farm pays this defendant his policy limit of \$50,000 -- Amber
15 Cooper's policy limit of \$50,000.

16 Erie Insurance then -- this defendant is insured
17 with Erie Insurance, and he has a total policy limit of
18 \$500,000, which amounts to really, \$250,000 of insurance on
19 two vehicles which is then lumped together.

20 You're going to hear that after his vehicle is
21 fixed and that is all taken care of, he waits until the summer
22 of 2002, again, in August, moving into September, before he
23 really begins to discuss any type of bodily injury settlement
24 or insurance claim with Erie Insurance.

25 What that essentially amounts to is he uses his

1 underinsured motorist portion of his policy, which essentially
2 if you get into an accident with somebody else who doesn't
3 have enough insurance, you can then go against your own
4 insurance under the underinsured motorist provision.

5 This defendant tells Erie Insurance during the
6 course of his accident claim that the accident happened
7 between 20 and 25 miles an hour. On November 26, 2002, Erie
8 Insurance pays him \$390,000.

9 You're going to hear that there are two mailings in
10 this case. The Judge gave you kind of a heads up about the
11 mailings. This is one of them. It's a very brief note that
12 this defendant sends. You should take note, sends on his
13 Superior Court letterhead to Erie Insurance. It's dated
14 August 24, 2002. It says: Ted, enclosed is a copy of the
15 letter that I sent to Mr. Keim as you requested. Mike.

16 Basically, what he does, in August, late August of
17 2002, he sees an attorney for Erie Insurance that he knows by
18 the name of Ted Miller out at a bar at happy hour in Erie.
19 You're going to hear from Ted Miller. Ted Miller is going to
20 tell you that he's in the bar with friends for happy hour with
21 employees from Erie Insurance and the judge comes up to him
22 and begins to discuss his pending claim. He's thinks that
23 that's a little odd because he's not involved in the insurance
24 claim and he really doesn't know anything about it. They then
25 have a brief discussion. And the next day or two, he gets

1 this note from the judge. Here's what you requested from me,
2 and the judge sends it on Superior Court letterhead.
3 Ted Miller is going to tell you he has no recollection of ever
4 requesting anything from this defendant regarding the
5 insurance claim. This is the enclosure he sends. Again you
6 can see on the enclosure, the letter to an individual by the
7 name of Mr. Keim, Chris Keim who works for Erie Insurance,
8 again Judge Michael Joyce. And it's a letter where he's
9 talking about I want to get my insurance claim started
10 essentially. You can see, it's dated August 24th and he
11 passes that on to Ted Miller and indicates in the note to Ted
12 Miller, this is the material you requested. I do not expect
13 that Ted Miller is going to tell you he requested one single
14 thing from this defendant.

15 That's one of the mailings.

16 The other mailing is this document right here
17 dated November 15, 2002. This defendant sent this to another
18 employee of Erie Insurance by the name of Ronald Habursky, who
19 you're going to hear during this course of this case. He ends
20 up to be the employee of Erie Insurance that handles this
21 defendant's insurance claim. And on November 15, 2002, this
22 defendant writes to Mr. Habursky: "On September 17, 2002, I
23 provided you with a copy of all my medical specials and
24 pursuant to your request, I provided you with copies of all
25 medical reports and office notes, along with a Narrative

1 Statement of Damages on September 20, 2002. It is now almost
2 two months later and I have not heard a word from Erie
3 Insurance.

4 "I'm disappointed that you have elected to ignore
5 my claim and have not complied with the notification
6 requirements of the Unfair Insurance Practices Act. If I do
7 not hear from you as a result of this correspondence, I will
8 assume that I need to retain counsel and litigate this
9 matter."

10 Eleven days later Erie Insurance pays this
11 defendant \$390,000.

12 Now, those mailings, those two mailings give rise
13 to what we call the mail fraud counts of this indictment. The
14 Judge is going to instruct you at the close of the case what
15 the elements of mail fraud are. Every federal crime has
16 elements which are the components that need to be proven. In
17 this case and any mail fraud case, a mail fraud essentially
18 amounts to a scheme to defraud for the purpose of obtaining
19 money or property from somebody, committed by a person who has
20 the specific intent to defraud and basically knows that
21 they're committing a scheme to defraud and the use of the
22 United States mail is in furtherance of the scheme somehow.

23 Now, you're going to hear from the Judge that the
24 mailing itself doesn't need to be fraudulent, the mailing just
25 needs to be committed in furtherance of the scheme in some

1 fashion.

2 With regard to this mailing, he sends this mailing
3 without question threatening a lawsuit, and within days they
4 paid him \$390,000.

5 Now, this case is those two mailings. And then
6 this defendant is charged with a variety of what we call money
7 laundering counts. Those counts you can essentially think of
8 as this. You take money which you have gotten from a scheme
9 or artifice to defraud, you then conduct financial
10 transactions with that money, and, in this case -- I'll talk
11 to you in a few minutes about some of the financial
12 transactions that this defendant conducted with his money --
13 but when we say money laundering counts, in this case, that's
14 essentially what we're talking about. You take your
15 ill-gotten gains and then take that money and buy certain
16 things or conduct financial transactions.

17 You are going to hear a variety of different pieces
18 of medical testimony and medical evidence in this case. We
19 will present some medical evidence through a variety of
20 different doctors, and I expect that the bulk of what this
21 defendant will present, if he chooses to present anything,
22 will be medical type testimony and witnesses.

23 This case is not about that medical testimony.
24 It's not about that medical testimony itself for these
25 reasons. You are going to hear an activity level from this

1 defendant which does not match his medical claims. The
2 activity level and the things that he was doing you will hear
3 will not match up with his medical claims. He tried to paint
4 a picture to the insurance company that he was almost
5 completely debilitated. When you review his activities in
6 this case, you will see that the claims he made to his doctors
7 are not accurate. So this case is not about his medical
8 claims. It is also not about his medical claims because you
9 will discover through the course of this case that he was not
10 providing his medical practitioners complete information. I
11 want you to think of it this way. Garbage in, garbage out.
12 If you don't give your doctor 100 percent accurate
13 information, your doctor's ability to diagnose what is wrong
14 with you is significantly hampered.

15 What this case is about are this defendant's lies
16 and half truths and omissions to the insurance companies.
17 Many of those lies and omissions and half truths are contained
18 in what we call a Narrative Statement of Damages. You saw,
19 you heard the judge in his first letter, mailing the
20 enclosure, he explicitly references the Narrative Statement of
21 Damages. The Narrative Statement of Damages is an 18-page
22 document that he provides to Erie Insurance on September 20,
23 2002. In that document, in that 18-page document, which he
24 prepares and provides to the insurance company himself, he
25 claims that the August 2001 accident affected his professional

1 and private life in a very significant way.

2 He indicates in the document that he seeks
3 compensation for past pain and suffering, future pain and
4 suffering, and loss of the enjoyment of life.

5 He makes a variety of different claims throughout
6 the document, some of which are inconsistent. He makes claims
7 that his ability -- that he loved to golf and his ability to
8 golf was significantly hampered by the August 10th accident.
9 He tells the insurance company, I love to scuba dive, it's one
10 of my favorite things to do, and I can't scuba dive anymore as
11 a result of this accident. He goes beyond that. He tells the
12 insurance company that he did not renew his scuba diving
13 licenses and his scuba diving teaching certificate. We're
14 going to get into that in a little bit more detail, but you
15 will come to see that those statements were complete lies.

16 He indicates to the insurance company that the
17 accident affected his ability to work, that it caused him to
18 be in need of surgery on his cervical and lumbar spine
19 regions.

20 He tells the insurance company that he had the
21 nomination for the Pennsylvania Supreme Court. What he says
22 to them is, I had the nomination -- we'll discuss that in a
23 little bit more detail -- and because of this accident, I can
24 no longer proceed with that, and it hampered my ability to be
25 on the Supreme Court.

1 He tells the insurance company in conjunction with
2 that that he could not drive or his ability to drive long
3 distances was significantly curtailed.

4 He also goes on and on and on in the Narrative
5 Statement of Damages about the impact on his ability to think
6 and concentrate. This is what he says at the end of his
7 Narrative Statement of Damages. I want you to remember this
8 quote and take it with you throughout this case.

9 "Certainly a review of this narrative only gives a
10 small glimpse of the past, present and future pain, suffering
11 and loss of enjoyment of life Judge Joyce has and will
12 experience. In short, there has not been a day since the
13 accident that Judge Joyce has been pain free. The permanent
14 injuries he sustained in the accident have had and continue to
15 have a significant effect on every facet of his professional
16 and private life."

17 Remember that quote. Remember that quote when you
18 hear what it is he was doing after this accident.

19 This is what he says about golf. You're going to
20 notice if you get a chance to look at this document, as we go
21 through the trial, you're going to notice a lot of what he
22 says about golf, even in his own statement is inconsistent.
23 He says on Page 7 of the narrative statement: I could not
24 complete a round of golf.

25 So then Page 8: I attempted to play golf five

1 times since the beginning of 2002, but I could not complete a
2 round.

3 On Page 8 he says: I cannot golf, swim or jog.

4 Page 12: Following the accident, I did not golf
5 for the rest of the 2001 season.

6 On Page 12, he says he's now physically unable to
7 play golf.

8 On Page 12, he tried golf a few times in the 2002
9 season.

10 Page 17, he's not able to play golf at all for the
11 remainder of the 2001 season. He reiterates again, I
12 attempted to play golf on several occasions during the summer
13 of 2002. Then he says he's unable to complete a round of golf
14 due to extreme pain and discomfort.

15 This is what the evidence will show about his
16 ability to play golf. The evidence will show that he played
17 golf over 20 times between August of 2001 and September of
18 2002, complete rounds of golf. And the way we know that is
19 the following. These agents went to the Western Pennsylvania
20 Golf Association and subpoenaed, provided them a grand jury
21 subpoena for their handicap system records. It's essentially
22 the organization in Western Pennsylvania where you send your
23 golf handicap. You're going to see that he submitted multiple
24 full round scores to the Western Pennsylvania Golf Association
25 handicap system between August 2001 and when he gets his money

1 from the insurance company. Numerous rounds of golf are
2 recorded by him with that handicap system.

3 You're also going to hear from a witness by the
4 name of Shelley Buehler that in March of 2002 she golfed full
5 rounds with this defendant at two premier type golf courses in
6 Florida, one called Old Memorial and one called Bay Hill. She
7 is going to bring into court and we're going to show you the
8 score cards from those rounds which she kept.

9 You're also going to hear that this defendant
10 golfed on a trip that he took to a resort called Breezes in
11 Jamaica in January of 2002. Shelley Buehler is going to tell
12 you that they golfed. Shelley Buehler was his fiance at the
13 time of these events.

14 But we don't stop just with Shelley Buehler on this
15 golf stuff. We have obtained all the way from Jamaica golf
16 records from that resort called greens fee control sheets.
17 They show quite clearly this defendant's name on the greens
18 fee control sheets. You're also going to hear that he golfed
19 at Lake Shore Country Club, which is the country club he
20 belonged to, and some of the times he golfed at Lake Shore
21 Country Club, those scores were not submitted to the handicap
22 system.

23 You're also going to hear that he golfed at Peek'n
24 Peak in May of '02 and golfed at Nemacolin in June of '02.
25 The evidence will show that the representations he made about

1 golf are not true. And we have obtained evidence outside the
2 United States for you that shows that.

3 This is what he said about scuba diving. He said
4 he cannot golf, swim or jog. He's not dove or taught diving
5 since the date of the accident. He attempted to scuba dive in
6 a pool to see if the pain could be tolerated. He did not
7 renew his scuba teaching certificate for 2002. He has not
8 taught scuba diving or dove since the date of the accident of
9 August 10, 2001. This is what he tells the insurance company
10 in September of 2002 about scuba diving.

11 This is what the evidence will show. You'll hear
12 evidence from his then fiance that they went scuba diving in
13 January of 2002 in Jamaica. You will see the documents, you
14 will see the documents where he renewed his scuba diving
15 instructor's license for 2001 and he did that in late August
16 2001, within days after the accident. So when he tells the
17 insurance company that he did not renew his scuba diver's
18 instructor's license, that is a flat out lie. He also renewed
19 his diving instructor's license for 2002 in December '01 and
20 then did the same thing for 2003 in December '02. So he
21 continually renews his scuba instructor's license.

22 You're also going to hear that he goes to a place
23 in the Caribbean called Bonaire, which is a very well known
24 hot spot for good diving, in December of 2002. Actually, he
25 gets his money on November 26th of 2002 from Erie Insurance.

1 Part of the money he got was because he couldn't scuba dive.
2 Within days after getting his money in mid December of '02,
3 this defendant goes to Bonaire and scuba dives. You will see
4 the documentation from the Netherlands Antilles which proves
5 that he went scuba diving. What it amounts to as it relates
6 to December 2002, he goes back again to Bonaire in January --
7 late January, early February of '03. What he does in January,
8 February of '03 is he fills out a diving release form. On the
9 diving release form there's a place when was the last time you
10 dove? He writes down December 10, 2002.

11 You'll also hear evidence that he continued to
12 dive. He continued to go to Bonaire in '04 and '06. You may
13 even see some pictures of him actually diving in '04 or '06,
14 or at least '04. So the evidence will show that on scuba
15 diving, he did not tell the insurance company the truth.

16 This is what he says about his nomination for the
17 Supreme Court of Pennsylvania. This is a direct quote at the
18 top. "Perhaps the most significant, long-lasting result of
19 the injuries sustained by Judge Joyce concerns his desire to
20 run for a vacant seat on the Supreme Court of Pennsylvania."

21 He also says: In 2001, Judge Joyce received the
22 republican nomination for the vacancy created by the
23 retirement of Chief Justice Flaherty and that he withdrew from
24 the 2001 election with the understanding that he would run in
25 2003.

1 None of this is true. The evidence will show this.
2 He also makes these claims -- I'm sorry, he says the statewide
3 campaign would require him to drive all over the state, 50,000
4 miles. He's unable to drive for longer than two hours without
5 taking a break and there's no way he could cope with the
6 physical and mental demands of a campaign. The evidence will
7 show that this defendant never had the nomination to the
8 Pennsylvania Supreme Court in either 2001 or 2003, nor did he
9 have his party's endorsement.

10 You'll also hear evidence that despite his claims
11 that he could not drive long distances, he was able to drive
12 long distances. He drove to Virginia in August of 2002 with
13 his first wife to visit their son, a drive from Erie of
14 approximately eight hours. I expect that she will tell you
15 that at no point in time did they have to stop because he
16 couldn't handle the drive physically.

17 You're also going to hear from his then fiance,
18 Shelley Buehler, that in September and October of '01, she and
19 this defendant drove to Notre Dame to go to two Notre Dame
20 football games, and she does not recall him having even the
21 slightest problem in doing that.

22 He makes a variety of claims throughout the
23 Narrative Statement of Damages about the impact that the
24 accident had on his ability to work as a judge. He says
25 things like in the last several months, he noticed an

1 inability to keep focused on subject matter and that he had
2 problems concentrating and that it takes longer to do the same
3 task than it did before the accident. And that he has to work
4 12 hours a day, most every weekend to get his work done
5 because he can't concentrate and he can't process information.

6 He says he can't sit for more than a two-hour
7 stretch. He's had to cope with a variety of physical
8 ailments, including headaches, leg cramping, back pain,
9 including psychological symptoms like anxiety and depression.
10 He also tells the insurance company that he spends the
11 majority of his time in his chambers at his office. He claims
12 to the insurance company that his staff was concerned about
13 his ability to absorb information and it took him longer to do
14 work and complete it. He actually also says he had to lie
15 down at midmorning because of mental fatigue. This is a
16 direct quote from the Narrative Statement of Damages.

17 What you're going to hear as the evidence comes in
18 is that he claims to the insurance company that he was so
19 debilitated and he was suffering so many symptoms that he
20 actually thought he had Lou Gehrig's disease. That's what he
21 says. He says the two months between the request for
22 consultation with Dr. Shields of the Cleveland Clinic
23 Department of Neurology and the actual exam on May 3, 2002,
24 was the longest two months in his life. He believed that he
25 may in fact have Lou Gehrig's disease or some other serious

1 neurological disease which was life threatening.

2 So in the Narrative Statement of Damages he
3 basically says from March and April of '02 leading up to the
4 appointment with Dr. Shields, he thought he had Lou Gehrig's
5 disease, and, basically, he didn't think it was going to be a
6 good result. He thought he had a life-threatening
7 neurological disease.

8 The unfortunate part about that for this defendant
9 is he failed to tell the insurance company even the slightest
10 word, not one single word about his flying activity in this
11 case. And what you will hear in this case is that in April of
12 2002, one of the months that this defendant said was one of
13 the longest months of his life because he thought he had Lou
14 Gehrig's disease, this defendant went to the FAA and applied
15 for a private pilot's license.

16 On April 8, 2002, he undergoes an FAA physical and
17 what you're going to hear, you're going to hear a lot from the
18 FAA doctor and from other individuals involved in flying, and,
19 as you may imagine, the FAA doesn't allow anyone who wants to
20 fly get up in the air. You have to go through a medical
21 clearance process. So on April 8, 2002, he goes to the FAA
22 physician's office to begin the process. He has a physical on
23 that day. The FAA's physician finds nothing wrong with him.
24 The FAA physician checks his upper and lower extremities, his
25 head, face, neck and scalp, spine and other musculoskeletal

1 systems, does a neurologic test. You're going to hear this
2 physical lasted about 15 or 20 minutes. What I want you to
3 keep in mind as it relates to this flying evidence is at the
4 same time this defendant tells the insurance company he
5 thought he had Lou Gehrig's disease, he walks into the FAA
6 physician's office and starts the process of getting a pilot's
7 license.

8 Prior to the physical, though, he fills out the FAA
9 form 8500-8, which is essentially a medical history form. He
10 checks no for all of those areas. Depression/anxiety? No.
11 Frequent or severe headaches? No. Neurological disorders?
12 No. Other illness, disability or surgery? No. Any current
13 medication? No. Any physician visits within the last three
14 years, excluding gallbladder. No. He tells the FAA that he
15 had his gallbladder removed.

16 He goes through that entire medical clearance
17 process. Fills out the forms, tells the FAA there's
18 absolutely nothing wrong with him.

19 The FAA doctor conducts a physical of him, finds
20 nothing wrong with him. The FAA then frees him to begin the
21 process of getting his pilot's license. This all begins in
22 the same months this defendant told the insurance company he
23 was so bad off, he thought he had Lou Gehrig's disease. And
24 he does not mention even one iota to the insurance company
25 ever that he was flying.

1 You're going to hear that after he's cleared, he
2 starts to fly, and this same defendant who told the insurance
3 company that he couldn't work because he was having mental
4 issues and he couldn't think and he didn't know essentially
5 what was going on and he had to work 12 hours a day on and on
6 the weekends, he takes the FAA written pilot's exam in April
7 of '02. He scores a 95 on the exam.

8 After he scores a 95, he starts to take flight
9 lessons beginning in late April. He accumulates from April to
10 the end of '02 almost 70 hours of flight time, what you're
11 going to hear from the FAA people is an extraordinary amount
12 of flight time in a very small window of time. He flies on
13 numerous occasions, approximately 50 times to rack up that
14 amount of hours.

15 You're going to hear from his flight instructor,
16 Kevin Poor. We're going to bring him back here from Portland,
17 Oregon. He's going to tell you in his experience with this
18 defendant. He deemed him to be a very athletic person and an
19 eager person to learn and a very good student who would
20 regularly study up and make sure he knew the material. He is
21 not going to tell you that he detected even the slightest
22 thing wrong with this defendant in the 50 or so times he flew
23 with him from April of '02 to the end of 2002.

24 You will also hear that in September of 2002,
25 actually September 26, this defendant passes his FAA flight

1 test to get his airman's license. He flies with an FAA flight
2 examiner by the name of Martin Haski out of the New Castle
3 airport. You're going to hear from Martin Haski. Martin
4 Haski is going to tell you what is all involved in the FAA
5 flight test. There is a portion of it that is kind of a
6 written exam or I guess really more of an oral exam, but it's
7 a ground exam, you have to pass that, then you go do your
8 flight. He's going to tell you that this defendant does an
9 exceptional job on the FAA oral exam. They then get in the
10 plane and this defendant without really any problems
11 whatsoever, passes his FAA flight test. He doesn't bother to
12 tell the insurance company this, however. He continues to
13 present to the insurance company a picture of a man who is
14 completely debilitated who needs to work 12 hours a day and on
15 the weekends in order to get his work done.

16 He continues to fly for several years. He renews
17 his FAA pilot's license in 2004 and 2006. Again, he only
18 lists gallbladder surgery as any medical problem. In April of
19 '05 he passes his instrument rating test.

20 This is what he tells the insurance company about
21 his need for surgery. He indicates outside of the NSD when
22 he's speaking to Ron Habursky, the adjuster, that a doctor in
23 Pittsburgh has indicated to him that he will need neck surgery
24 but recommends prolonging it.

25 You're going to hear from Dr. Matt El-Kadi,

1 probably the beginning part of next week, who is the doctor
2 this defendant saw in Pittsburgh and Dr. El-Kadi is not going
3 to say he recommended surgery for this defendant. He is
4 actually I expect going the tell you that he recommended a
5 conservative course of treatment. He did not recommend
6 surgery for this defendant. So, that is not the truth, the
7 representation that this defendant made with regard to
8 surgery. And you are, in fact, going to probably hear from
9 several surgeons in this case and none of them recommended
10 that this defendant have surgery.

11 He makes a variety of different claims with regard
12 to his ability to exercise or workout. He makes it clear to
13 the insurance company that he was an individual prior to the
14 August 10, '01 accident who took great pains to maintain some
15 level of physical fitness. He indicates in the Narrative
16 Statement of Damages at Page 16 that he's only able to engage
17 in light workouts once or twice a week. He indicates that he
18 has to avoid any and all exercise which will place a load on
19 the cervical or lumbar spine, which leaves very little,
20 specifically regarding cardiovascular fitness.

21 The evidence that you will hear in this case is
22 that in preparation for his trip to Jamaica in January of '02
23 where he went scuba diving and golfing, he worked out every
24 day from January 7 to the 13th and the 15th to the 17th.

25 What we have done in this case is we've gone to the

1 place where he worked out, which is called Nautilus, in Erie
2 and we have obtained from them their records. What they
3 basically do at Nautilus is track every time one of their
4 clients or gym people I guess goes into the facility. You
5 will see the records will indicate that in 2002, he entered
6 the facility over 70 times. And it will indicate also that he
7 entered the facility every day from the 7th to the 13th and
8 the 15th to the 17th.

9 He also indicates in a legal document which he
10 filed in 2003, he provides in that legal document a statement
11 from his then girlfriend, now wife, where she indicates that
12 she and the defendant were regularly rollerblading in the
13 summer of 2002 out on what we call Presque Isle State Park. I
14 don't know if you guys have ever been there, if you haven't
15 you should definitely come up to Erie sometime.

16 You're going to hear not only from his current wife
17 that he was rollerblading regularly in the summer of 2002,
18 you're going to hear from several other people that they saw
19 him on Presque Isle State Park in the summer of '02
20 rollerblading.

21 Now, ladies and gentlemen, you're going to hear
22 from the Judge at the close of this case that I am not
23 required to prove a motive to you. Motive is not an element
24 of the offenses. That may be somewhat foreign to most jurors
25 when they first come into court who think that the government

1 has to prove a motive to you. I don't have to prove a motive
2 to you. But we're going to prove a motive to you and the
3 motive is this.

4 This defendant needed money and you're going to
5 find out how badly he needed money from a variety of different
6 pieces of evidence. One is a letter he writes to Shelley
7 Buehler, his then fiance, during the course of their breakup.
8 You're going to hear it was an acrimonious breakup. It was
9 not a good breakup. Things went poorly. But part of the
10 breakup involved a financial settlement because this defendant
11 and Shelley Buehler at the time they broke up owned some
12 property together and he was on the mortgage to the house that
13 she had before she started dating him. You're going to see
14 some of these letters back and forth where they're trying to
15 reconcile their financial differences.

16 On July 18, 2002, this defendant writes Shelley
17 Buehler a letter. Part of their settlement was Shelley
18 Buehler was telling him that she wanted in order to settle up
19 their financial affairs that he owed her \$40,000. This
20 defendant owed her \$40,000. He says right in the letter on
21 July 18, '02 that he cannot pay her a lump sum of \$40,000. He
22 wants her to accept a lesser amount at that time and then
23 maybe he can make payments.

24 This is within ten days of when he goes back to
25 State Farm and tells State Farm, I want to submit an insurance

1 claim. It is literally a few months before he begins to
2 pursue the claim with Erie Insurance.

3 When he breaks up with Shelley Buehler and leaves
4 her residence, you're going to hear that he lives in his
5 office for several months. This is a Superior Court judge.
6 When he leaves his fiance's residence, he does not go out and
7 get another apartment or another house. He lives in the court
8 chambers for multiple months.

9 You're also going to hear that when the landlord at
10 the court offices finds out that the judge is living there, he
11 basically has a discussion with him about, hey, you're not --
12 the lease doesn't authorize you to live here. He says to him
13 words to the effect of, I could lease out that space where
14 you're living right now for \$800 a month. And the defendant
15 tells him in no uncertain terms, I can't afford to pay \$800 a
16 month.

17 Ultimately, he and the landlord agree on a
18 resolution where this defendant will pay \$100 a month to live
19 in what amounts to a large room at his Superior Court chambers
20 building.

21 You're also going to hear that this defendant makes
22 a variety of purchases after he gets his money from the
23 insurance companies. Within about a year, year and a half, he
24 makes these purchases that you see up here. He ultimately
25 moves out of his one-room at his chambers, put \$110,000 on a

1 house valued at approximately \$360,000 and moves into that
2 house.

3 He buys a motorcycle for slightly more than
4 \$18,000.

5 He puts a down payment on an airplane for \$27,500.

6 He buys furniture for his new house for over
7 \$22,000.

8 He buys a home theater system for over \$3,000.

9 He buys a hot tub for almost \$7,000.

10 He even goes so far as to get new countertops for
11 his new house at \$6,000.

12 And then an engagement ring for \$15,000.

13 We present these to you because we will argue to
14 you at the close of the case that these purchases, along with
15 some other additional purchases that you're going to hear
16 about, I expect, go to his motive to commit the crime, and
17 they provide you a window into why he really wanted the money.

18 One of the things we're going to ask you to keep in
19 mind is the general timing of this case and how pieces go
20 together. You should consider how all of the evidence fits
21 together from a timing perspective. One of the things I want
22 you to consider in this case is in 2001, he told State Farm
23 that he wasn't going to pursue an insurance claim. After he
24 breaks up with his girlfriend or in conjunction with the break
25 up with his fiance, he all of a sudden starts to pursue his

1 insurance claims.

2 Those are the types of things I'm asking you to
3 consider when you consider timing in this case. I want you to
4 remember these things and carry these with you as you go
5 through this case because these things will have an impact on
6 the case throughout.

7 I want you to remember that you will hear evidence
8 in this case not only from the woman who hit this defendant,
9 but also from an accident reconstructionist that this accident
10 happened at less than five miles an hour.

11 I want you to remember more than anything perhaps
12 throughout this case because you're going to hear from a
13 variety of doctors that may try to convince you that he was
14 debilitated, I want you to remember his activity level that
15 you just heard about as we go through the case. I want you to
16 remember the motive that we have presented. That was just a
17 brief snippet of some of the motive evidence we have.

18 Also I want you to remember because it has an
19 impact on his relationship with or his interactions with the
20 insurance company the fact that this defendant was a judge
21 during the time frame involved. That is not a fact that he
22 can get away from. And it has a huge impact on what it is
23 that occurred in this case. And you can see that by the fact
24 that he sent to the insurance company documents where he
25 either called himself a judge or sent it on his Superior Court

1 letterhead.

2 Now, you may be asking as jurors, how am I to
3 determine what happened in this case? Many of you, if not
4 most of you, haven't been jurors before. You may just be kind
5 of overwhelmed. How am I -- what am I supposed to do to
6 figure out what happened here? Judge Cohill gave you a pretty
7 comprehensive rundown. I just want to kind of highlight a few
8 of those points. You have some tools that are available to
9 you that help you figure out what it is that happened here.
10 Because, as Judge Cohill said, you guys are the judges of the
11 facts. You and you alone are going to determine what the
12 actual facts are here.

13 You do that a variety of different ways. One of
14 the ways you do that is by assessing the credibility of the
15 witnesses. You can do that very simply in a number of
16 different ways. You can see the demeanor in which they
17 testify. You can judge for yourselves whether they are
18 evasive, they want to answer questions, or whether they seem
19 like they're trying to be as honest as possible and as
20 straight as possible. You can look at their body language.
21 You can obviously evaluate what it is they say. You can
22 evaluate whether they have a bias or don't have a bias.

23 One of the most important things I want you to
24 consider though is your common sense. Always evaluate
25 everything that you hear from the witnesses through the prism

1 of your own common sense. Does this make ordinary, common
2 sense what this witness is saying? Is it believable on its
3 face? That perhaps is the best tool that you have.

4 Another great tool is to determine is there
5 corroboration for what this witness says? Corroboration is
6 just our fancy legal way of saying is the testimony of one
7 witness supported by a piece of evidence or by the testimony
8 of another witness?

9 There are going to be a variety of pieces of
10 evidence. A lot of documents in this case. You're going to
11 hear from a number of different witnesses. This case is going
12 to last several weeks. So we ask you to try and track for
13 yourselves the ways in which the testimony of one witness is
14 supported by the testimony of another witness.

15 I also want you to bear with us just from a
16 scheduling standpoint a little bit because there are a number
17 of professional witnesses and a number of witnesses from Erie
18 that we have to get in here in front of you to testify. As
19 you can imagine when you're talking about 25, 30, 35
20 witnesses, it can become difficult to schedule witnesses. We
21 may not be presenting evidence in a perfect chronological
22 order. We ask you to keep that in mind and bear in mind we
23 have some competing schedules at work.

24 You can consider the evidence in this as with any
25 case, whether it's a civil or a criminal case, as a puzzle.

1 All your job is and what you and I will do together when the
2 case comes to a close is put the pieces of the puzzle
3 together.

4 What is beautiful about a puzzle is each piece
5 supports other pieces. You and I together at the close of
6 this case will put the pieces of the puzzle together. We will
7 show you that what this defendant said in the Narrative
8 Statement of Damages was not within 1,000 miles of the truth.
9 And at the close of the case, I will ask you to find him
10 guilty as charged. Thank you.

11 THE COURT: I think this is a good time to break
12 for lunch, ladies and gentlemen. So we'll recess today at
13 this time, twelve-fifteen, almost, and reconvene at quarter of
14 two.

15 I think you probably all know when you come back,
16 go up to the jury room and you'll be called down at the
17 appropriate time.

18 (Whereupon, there was a recess in the proceedings.)

19 THE COURT: Some of our jurors do have note pads,
20 but they have been instructed no notes until actual testimony
21 begins.

22 Mr. Friedman.

23 MR. FRIEDMAN: Thank you, Your Honor.

24 May it please the Court, Mr. Joyce, Mr. Leight,
25 counsel, ladies and gentlemen of the jury. If you want to

1 know what this case is about, it's a witch-hunt, pure and
2 simple. It's a witch-hunt.

3 There was a negotiated insurance settlement between
4 Mr. Joyce and two of the largest companies in the United
5 States of America, State Farm Insurance Company and Erie
6 Insurance Group. They reached a resolution of this case back
7 in 2002. The federal government got involved in this case and
8 entered into this case four years later. They've wasted
9 hundreds of thousands of dollars of taxpayer's money
10 investigating this case. You know why? Because of one
11 individual, a vicious, jilted woman by the name of Shelley
12 Buehler, the ex-fiance and girlfriend of Michael Joyce. She's
13 an architect. She's the architect from hell.

14 Ladies and gentlemen, this case is a very serious
15 case. It's a criminal case, but just because she makes these
16 allegations does not give the government the right to try to
17 take down a fellow Pennsylvanian, a Pennsylvania state judge,
18 because that's what they're trying to do.

19 In a criminal case, as Judge Cohill told you and we
20 told you during voir dire examination, the government has the
21 burden of proof. Mr. Joyce is presumed to be innocent of each
22 and every allegation as he sits here before you today, and
23 each one of you agreed with that. The government has the
24 obligation to prove to you beyond a reasonable doubt each and
25 every element of the offense before you can even consider

1 finding Mr. Joyce guilty.

2 Whether he golfed or scuba dived, that's not the
3 issue in this case at all. They seem to think this is some
4 sort of personal injury case where they come in and challenge
5 the personal injuries of this person and try to prove a case
6 by preponderance of evidence or not prove it. That not what
7 this case is about.

8 There are a lot of things in this case that we
9 certainly don't dispute with the government. No. 1, there was
10 a motor vehicle accident. These aren't even issues that you
11 have to consider. They're not issues in the case. They're
12 givens. There was a motor vehicle accident back on August 10,
13 2001. Amber Cooper ran into the back end of Michael Joyce's
14 car. That's a given. That's not in dispute.

15 Mr. Trabold had to tell you it was a Mercedes-Benz
16 that he was driving, and it was. You know why he told you
17 that? Because he wants to build in your mind a little bit of
18 prejudice toward Mr. Joyce because he's driving a
19 Mercedes-Benz. We know it. You know it. Put that aside.
20 Let's deal with the facts, Mr. Trabold.

21 The second thing is, Mr. Joyce had a cervical
22 fusion in his neck. He had C5-6, C6-7 fused in 1992. That's
23 a given. Did you ever hear that from the government? Did
24 they ever mention that to you? Not a word. Not a word.

25 The next thing that's not in dispute is that there

1 was an insurance settlement with State Farm Insurance Company,
2 of \$50,000. Not in dispute. It's a given.

3 He settled with Erie Insurance, his own carrier --
4 we'll talk about that -- for \$390,000. That's not in dispute
5 either.

6 It's not in dispute that after he was involved in
7 this accident that he rollerbladed. It's not in dispute that
8 he went to Nautilus. It's not in dispute that he golfed. And
9 it's not in dispute that he scuba dived a year and a half
10 later. We don't dispute any of that. They didn't have to run
11 down to the Caribbean and dig that up or run out to Nautilus
12 and do all that stuff. All they had to do was ask. We didn't
13 dispute any of that. He can't do it the way he did before,
14 but he certainly didn't cut off his activities. He's never
15 taken the position that he's totally debilitated and can't do
16 anything. Never said that at all.

17 It's not in dispute that he flew an airplane, that
18 he took flying lessons. That is not disputed. He took them
19 out at Erie International Airport in the middle of the day a
20 hundred yards from where the accident happened. He wasn't
21 trying to hide anything.

22 It's not in dispute that he received this money and
23 went out and bought various items. He put the \$300,000 into
24 his account. That's a given. All they had to do was call,
25 call the company, there it is. That wasn't disputed. It's

1 not disputed that he bought a house or bought an airplane or
2 paid off a line of credit. None of that is in dispute.

3 Ladies and gentlemen, it's not in dispute that he
4 was injured in this motor vehicle accident. Mr. Trabold told
5 you that the medical evidence in this case is irrelevant,
6 let's not even talk about it. That's what this case is about.
7 The determination that you have to make and the issues that
8 are here for you to decide are whether or not Michael Joyce
9 believed that he was injured in the accident. And they have
10 to prove that beyond a reasonable doubt not only that he
11 wasn't injured, but that he didn't believe that he was
12 injured. They have to prove to you beyond a reasonable doubt
13 that he created a scheme to defraud the insurance company.
14 They have to prove to you beyond a reasonable doubt that he
15 intended to defraud the insurance company. They have to prove
16 to you beyond a reasonable doubt that he made material
17 misrepresentations to these insurance companies with the
18 intent to defraud them, not inaccuracies, not misstatements,
19 not even exaggerations, they have to be material
20 misstatements. That's what they have to prove to you to prove
21 mail fraud.

22 As far as money laundering, they have to prove to
23 you not that Mr. Joyce received the money and put it into his
24 accounts and spent it. That doesn't make any difference. Of
25 course he did that. He admits that. They have to prove to

1 you that he did that knowing that these were fruits of a
2 crime. That's the real issue. That he took that money
3 knowing that this was illegally obtained money. Can they
4 prove that to you beyond a reasonable doubt and that he then
5 took that money and spent it? That's what you have to decide.

6 Now, ladies and gentlemen, let's take a look at the
7 evidence in the case. Who is Michael Joyce? Michael Joyce
8 was raised here in Pittsburgh. He grew up across the
9 Allegheny River on the North Side, spent the first ten years
10 of his life there. After that, his family moved out to Butler
11 County and then up to Erie. He graduated from Academy High
12 School in Erie in 1967.

13 After graduating from Academy, he joined the United
14 States Army and went off to Vietnam to serve his country. He
15 served his country valiantly. He was in combat. Friends
16 around him were killed. He came back from Vietnam and in his
17 head, he said to himself, I have been given a chance to live.
18 I'm going to live life to the fullest.

19 He came back to Erie, Pennsylvania, and he enrolled
20 at Penn State Behrend, spent four years there, was on all
21 kinds of athletic teams, the diving team, the swimming team.
22 He was on the soccer team. He was on the wrestling team. He
23 did incredibly well. He's a very gifted athlete.

24 After graduating from Behrend, he went to work for
25 General Electric for a short period of time, and then he went

1 to law school in New Hampshire. Graduated from law school.
2 Came back to Erie County and practiced law in a small town,
3 Northeast, Pennsylvania. Practiced out there for a number of
4 years, got married, had two sons, Tim and Rob. They're both
5 in their 20s at this point in time. He worked out there for
6 about seven years.

7 Then he decided he was going to run for the Erie
8 County Common Pleas court. He ran and actually won both
9 nominations in 1985 and became a judge of the county court.
10 He served on that court until 1997. At that time, he was
11 elected to the Superior Court of Pennsylvania. And what that
12 is, that's what we call an intermediate appellate court. They
13 hear decisions that are appealed from the Common Pleas court.
14 That's a statewide court. He ran statewide and he won.

15 He served on that court until 2007 when he elected
16 not to seek retention and he didn't seek retention because of
17 this particular indictment. He lives in Erie with his wife
18 Joanne at the present time.

19 Ladies and gentlemen, as I said, Michael Joyce has
20 his entire life been an avid athlete. He goes out and does
21 whatever he can. He operates at a frenetic pace. He's always
22 doing something. If you define in your mind what a couch
23 potato is, he's the opposite of a couch potato. Before this
24 accident, he did all kinds of activities. He was an avid
25 golfer. He was an avid scuba diver. He was an instructor.

1 He was a master diver. He rollerbladed. He lifted weights.
2 He was always doing some type of activity. That's who he was.

3 But the other side of him is he was always very
4 attuned to his health needs. When he had a medical problem,
5 he sought out medical help. And sometimes he would perceive
6 himself as having very serious issues when, in fact, they
7 might not have been as serious. But what he was concerned
8 about was I have a problem, I'm going to go see a doctor, I'm
9 going to do what I can.

10 But he wasn't a complainer, ladies and gentlemen.
11 He didn't complain at all. I told you when I started that in
12 1992 he had a cervical fusion. This, ladies and gentlemen, is
13 a spine. This is where your head would fit, were we to put a
14 head on here. Those of you in the medical profession probably
15 know this better than I do. But these are the cervical disks,
16 the top disks and this would be No. 1, 2, 3, et cetera down to
17 7. And then below 7 are the thoracic disks, and then below
18 that are the lumbar disks.

19 In 1991, Mr. Joyce was in a motor vehicle accident.
20 As a result of that, he sustained an injury to his cervical
21 area, to his neck, right back here.

22 In 1992, he had to go in and have the disks fused.
23 He had to have disk C5 and that would be if you can see the
24 material between disk 5 and disk 6 is removed. And the
25 material, the disk material between 6 and 7 is also removed,

1 and then these disks are fused together.

2 Mr. Trabold didn't tell you about this. But this
3 is extremely important because once someone has their neck
4 fused what happens is they lose mobility in that area. Then
5 every time you use and bend your neck, you place additional
6 stress on your neck both above and below the fusion sites. So
7 what happens is, over years of doing this, over years of using
8 your neck, hyperextending it, you cause changes above and
9 below the fusion area. And these are called degenerative
10 changes. These may be asymptomatic for years. You may not
11 notice anything. But trauma on that or just age on that can
12 cause you to have all sorts of problems at the areas above and
13 below the fusion. That's extremely important in this
14 particular case.

15 Ladies and gentlemen, let's talk about the
16 accident. August 10, 2001. It was a nice morning in Erie,
17 Pennsylvania. It's August, it's not snowing yet. That's a
18 good thing. It will be in a couple more weeks. Mr. Joyce is
19 on his way to work. Mr. Trabold showed you the diagram of
20 Asbury and West 12th Street in Millcreek Township where this
21 happened. Mr. Joyce was in the merge lane making a right-hand
22 turn onto West 12th Street. He pulled up. Ms. Cooper was
23 somewhere behind him. He does not know where. He did not see
24 her at any point in time. The vehicle in front of him went
25 down 12th Street. He moved up to go onto 12th Street and all

1 of a sudden, boom, he's hit from behind. Never saw it. Never
2 expected it. He's rear-ended from behind. Ms. Cooper will
3 testify that she was not paying attention. In fact, what
4 Ms. Cooper will tell you is instead of looking forward while
5 she's driving her car, she's looking somewhere over in here.
6 And she says she doesn't just look over here and look back,
7 she continues to look over here and doesn't move forward
8 slightly, as Mr. Trabold told you, they would like her to say
9 that, but what she says is, I put my foot on the accelerator,
10 I pushed down, two seconds later I feel that. Never saw the
11 car at all. First thing I knew was boom, hit the car in front
12 of me.

13 Pushes the accelerator, one, two, boom. She says,
14 I'm only going a couple miles an hour. She wasn't looking at
15 her speedometer. She wasn't even looking forward. She has no
16 idea how fast she was going. Mr. Joyce has no idea how fast
17 she's going. All he knows is all of a sudden he's hit from
18 behind.

19 People will tell you, experts will tell you that
20 the speed of Ms. Cooper's vehicle was somewhere between five
21 and eleven miles per hour. It really doesn't make all that
22 much difference because what you have is a rear-ender
23 situation on somebody with a pre-existing cervical condition.
24 He's hit from behind.

25 He and Ms. Cooper then pull over into an area.

1 They exchange information. Ms. Cooper asks him, are you hurt?
2 And he says no, or I don't think so. He leaves. She leaves.

3 The evidence will show that the government met with
4 her not once, not twice, not three times, they met with her
5 five times before she was able to testify to that. You'll see
6 when she testifies that she tries to change her story, to make
7 it look as though this is no big deal, looking forward, I just
8 tapped him. But then she has to acknowledge that that wasn't
9 true. You'll see her on video and you can decide what her
10 credibility is like.

11 After the accident, Mr. Joyce goes to his office.
12 And he's starting to have some neck pain. The first thing
13 that comes to his mind is, I've got this cervical fusion, I'm
14 concerned about it. I don't know what it is. He calls
15 Dr. McGee. Dr. McGee is the doctor who did the cervical
16 fusion on him. Dr. McGee says, you ought to go down to the
17 hospital to get an x-ray, which he does.

18 Then the next day he meets with Dr. McGee. Next
19 day he goes in and meets with Dr. McGee. He's got some neck
20 pain. Dr. McGee looks at the x-ray and says the fusion site
21 looks pretty good, I'm not sure exactly what is causing it.
22 Let's take a further look at it. Let's have Dr. Jageman look
23 at you also.

24 Dr. Jageman is his family doctor. Dr. Jageman
25 takes a look at him. They send him back for some more x-rays.

1 He has some hip problems which are later attributed to the
2 seat belt hitting a nerve on the side. They decide they'll
3 send him to physical therapy.

4 He goes to physical therapy you'll see multiple
5 occasions during August, during September. He has an MRI.
6 His complaints are the same. It's primarily neck pain, but he
7 has some lower back pain.

8 They continue to investigate. Dr. Jageman,
9 Dr. McGee initially, then Dr. McGee retires from the practice.
10 He has a heart attack, has surgery and has to leave practice.
11 So he sends Mike over to Dr. Lyons who is an orthopedic
12 surgeon to investigate.

13 He continues you'll see multiple visits to
14 Dr. Jageman, Dr. Thomas. Dr. Lyons sends him up to --
15 Dr. Thomas, who is a pain specialist, says, let's just try
16 this to see what has worked. Let's do an epidural injection.

17 I don't know if any of you have ever undergone an
18 epidural, but the way that works is -- we'll go back to our
19 spine -- Dr. Thomas first sedates Mr. Joyce and then he takes
20 a needle and places it into his neck here and injects a fluid
21 into there to try to help him with the pain. It does. It
22 helps. It's a painful procedure. It's a risky procedure.
23 Mr. Joyce undergoes it because he wants to get better. He
24 does it not once but he does it twice. He comes back in
25 October and tries that again.

1 Mr. Joyce's problems, you'll see they wax and they
2 wane. They get a little better, but they still continue to
3 bother him. His primary complaint is always in his neck. But
4 he does have lower back pain and he does have some memory
5 issues which he talks about with his doctors. His doctors
6 attribute that to a possible head trauma to anxiety from this.
7 But he goes on to treat, and you'll see, he continues to treat
8 through October, through November. Dr. Thomas does the next
9 epidural, decides to send him back for another round of
10 physical therapy which he begins in November of 2001, Hand and
11 Arthritis Rehabilitation.

12 He does 15 sessions of physical therapy there. And
13 then in the fall -- in the spring he continues. In January,
14 they send him to Dr. DeMatteis. Dr. DeMatteis is a
15 neurologist. Mr. Joyce is exhibiting radicular complaints in
16 his hand and they attribute that to the nerves in his neck.
17 They're concerned about the area above and below the fusion
18 site. So they send him for an EMG and the EMG comes back and
19 confirms that he's having these radicular symptoms, confirms
20 possible nerve injury.

21 He's also having and he has developed these about a
22 month after the accident, these things that are called
23 fasciculations. What those are, they're switching of the
24 nerves. They're primarily in his legs, but they also appear
25 in his arms at times. He becomes very concerned about this.

1 One of his doctors says to him, these are related to the
2 accident. We're not sure exactly what is causing it, but it's
3 something that we need to look into.

4 Dr. DeMatteis addresses that with him to try to
5 determine what it is. One of the things that comes out as a
6 possibility is Lou Gehrig's disease because Lou Gehrig's
7 disease involves these fasciculations. Dr. DeMatteis does not
8 think it's Lou Gehrig's. Dr. Jageman does not think it's Lou
9 Gehrig's disease. They send him up to the Cleveland Clinic
10 because there's an expert to determine whether or not it
11 really is Lou Gehrig's disease. As it turns out, it's not Lou
12 Gehrig's disease. He's concerned about it, but it's not.

13 That concern continues, though, even up into 2004.
14 He goes back to Dr. DeMatteis with a fasciculation issue.
15 This is well after the cases are settled. He's still
16 concerned about the possibility of having Lou Gehrig's disease
17 even in 2004. His doctors again confirm to him that he does
18 not in fact have Lou Gehrig's disease.

19 In the summer of 2002, he finally is sent to one of
20 the best radiologists in the Erie area, Dr. Carol Lyons. He
21 has had a number of MRIs. Dr. Lyons does another MRI to try
22 to figure out what is still causing his neck problems and
23 lower back problems. What she finds on an MRI is he has
24 bulging disks in his lower back at L4-5 which is touching on
25 the spinal cord. She also finds that above his fusion site at

1 C3-4 and C4-5, he's got foraminal narrowing. What that is, if
2 we go back to our spine again, in this particular area, this
3 is where the nerves come out of the spinal cord. She finds
4 that that particular area is narrowed and as a result of that
5 narrowing, there is encroachment on these nerves. And what
6 the doctors attribute the cervical pain is to that particular
7 encroachment. That's the best explanation that they can come
8 up with in terms of a cervical discomfort.

9 In the summer of 2002, Mr. Joyce files a liability
10 insurance claim with State Farm Insurance. Initially, he had
11 no intentions, as Mr. Trabold told you, of filing the claim.
12 But after he goes through all this treatment, all this pain,
13 all this discomfort, he elects to file a claim with State Farm
14 in the summer of 2002. Now, those of you who aren't familiar
15 with liability claims, the way it works is everybody who has a
16 motor vehicle in Pennsylvania has to purchase liability
17 insurance. What that does is that provides coverage in case a
18 person is negligent in a motor vehicle accident. If the
19 person that's injured is not at fault, and surely Mr. Joyce
20 was not at fault, there's no dispute about that, they have the
21 right to recover certain damages in the automobile accident.
22 They have the right to recover damages for pain, for
23 suffering, for inconvenience, for the loss of life's
24 pleasures.

25 He files the claim with State Farm Insurance

1 Company. They say to him, as they do in every case, we want
2 to look at your medical records. So, he signs a medical
3 authorization for them. The case is assigned to an adjuster
4 named Bill Burt, one of their senior adjusters. He obtains on
5 his own the medical records from every single doctor that
6 Mr. Joyce had seen, every single one.

7 Ladies and gentlemen, this is the State Farm file
8 that he develops. He goes through and does a complete
9 analysis of Mr. Joyce's injuries. He looks not only at the
10 medical records, but he looks at photos of the car. He looks
11 at everything. Does an investigation of the case.

12 What is recoverable, as I said, are all those items
13 of damages. In addition to that, he knows that individuals
14 have the right to get damages for what is called aggravation
15 of a pre-existing condition. In other words, in Pennsylvania,
16 and in every state, you have to take the person that's injured
17 as you find them. If it's a person that has a pre-existing
18 injury and is vulnerable to injury, then the person that hits
19 him has to pay damages. You can't say, well, it was an older
20 woman that got hit, had it been a young person, she wouldn't
21 have been injured so I don't have to pay her. You have to
22 take the person as you find them.

23 What Mr. Burt says is we have this clear cervical
24 injury back in 1992. We have a fusion. We have injury above
25 and below the fusion. Mr. Burt decides on his own that the

1 case exceeds the value of the limits of \$50,000. Mr. Joyce
2 doesn't even make a demand. Mr. Burt reviews the files,
3 reviews the records, contacts Mr. Joyce and says, we believe
4 that this case exceeds the value of the policy limit and he
5 offers \$50,000, which Mr. Joyce accepts.

6 Mr. Joyce then has to go to Erie Insurance, his own
7 carrier. He has an underinsured motorist policy with Erie
8 Insurance. What that is is whenever you buy insurance, you
9 can buy underinsured motorist protection. That protects you
10 in case you're in an accident. He had bought this years
11 before, had paid premiums for it and had purchased it with
12 Erie Insurance, \$500,000 of underinsured motorist protection.
13 What that did was, that, in effect, supplied Ms. Cooper with
14 an additional \$500,000, which she didn't buy on her own. She
15 was not responsible enough to buy that on her own. He bought
16 it. And it was his coverage. Erie Insurance then has the
17 obligation to do their own investigation of the accident.

18 Mr. Joyce before he can settle with State Farm has
19 to have Erie's consent to settle. So he contacts Erie and
20 says, I have an underinsurance policy with you. I need your
21 consent to settle. And they say to him, that's fine. You can
22 settle.

23 At about this time, this is August of 2002, this is
24 about a year after the accident, Mr. Joyce is at the
25 Waterfront restaurant in Erie. This is a bar restaurant

1 that's frequented by many people who work in the downtown area
2 of Erie. During our summer months, which aren't very lengthy
3 in nature, a lot of people go there on Fridays or during the
4 week for happy hour. Mr. Joyce was there. Mr. Joyce ran into
5 a few of his friends, people that he was very familiar with
6 who worked at Erie Insurance. One of them was Ted Miller.
7 Mr. Miller is an attorney with Erie Insurance. He was there
8 with a number of people. Mr. Joyce sat down with Mr. Miller
9 and with the rest of them and during the course of the
10 conversation, the claim came up with Mr. Miller.

11 The following day, Mr. Joyce sends a letter to
12 Mr. Miller and Mr. Trabold showed you that. He sent an
13 official letter saying I'm submitting a UIM claim to Erie
14 Insurance. This is what anybody would do. This is typically
15 what is done in these types of cases.

16 What he also does is he writes a little note to
17 Mr. Miller and says, enclosed please find -- and he picks up a
18 piece of stationery to write it on which says Superior Court
19 of Pennsylvania. Mr. Trabold makes a big deal out of the fact
20 that he used that piece of stationery. Mr. Miller has known
21 Mr. Joyce for over 30 years. He knows he's a judge of the
22 Superior Court. He knew it before he got this stationery. He
23 knew it after the stationery. The stationery is meaningless.
24 It's totally meaningless. Mr. Miller gets that. Erie
25 Insurance gets the claim. They then assign it to their most

1 senior adjuster, fellow by the name of Ron Habursky.

2 Mr. Habursky does what he's supposed to do. He
3 acquires all of Mr. Joyce's medical records. He develops a
4 file in this case. This is Mr. Habursky's file. This is what
5 he develops. Medical records. Mr. Trabold says to you, don't
6 worry about medical records, don't worry about medical
7 treatment. That's what the case is about. Mr. Habursky does
8 a complete review of the file.

9 Now, an underinsured motorist claim is much
10 different than a liability claim. Underinsured coverage is
11 coverage that's purchased by you. It's coverage that was
12 purchased by Mr. Joyce. Mr. Joyce paid for that coverage.
13 Erie Insurance has a duty because its their insured they're
14 dealing with, and they treat these cases very differently.
15 The other difference is if an agreement cannot be reached on
16 underinsured coverage, it goes to arbitration, not to a jury
17 trial. Liability coverage would go to a jury trial. So what
18 adjusters have to do when they decide whether or not to settle
19 the case is, they have to look at the file, evaluate it and
20 then decide what is this file worth?

21 Mr. Habursky knows that if they can't come to an
22 agreement, the case is going to go to arbitration.
23 Arbitrators are three lawyers, one is appointed by Mr. Joyce,
24 one is appointed by Erie Insurance, the third is appointed by
25 the two of them. So you have three arbitrators.

1 Typically, arbitration awards are much higher than
2 jury awards because you're dealing with three lawyers, and
3 Erie Insurance knows that. Erie Insurance knows that Michael
4 Joyce is a judge. They take that into account the same as
5 they would take into account regardless of whoever it is.
6 They have to know the plaintiff to evaluate the case.

7 They look at the case. They're aware of the
8 pre-existing injury. They're aware of the treatment that
9 Mr. Joyce has had. They're aware of the various diagnoses
10 that have been made and they decide that the case is worth
11 somewhere between three and \$500,000 based upon their
12 evaluation.

13 Mr. Habursky has authority to try to negotiate a
14 settlement with Mr. Joyce. He meets with Mr. Joyce. They go
15 back and forth. They negotiate and eventually they reach an
16 agreement to settle the case at \$390,000. About \$110,000 less
17 than the insurance coverage that was available.

18 Case is closed. Erie is satisfied. State Farm is
19 satisfied. Mr. Joyce is satisfied. Should be the end of the
20 case. But it's not. Four years later, the federal government
21 gets involved as a result of Ms. Shelley Buehler.

22 Ladies and gentlemen, Mr. Joyce is not perfect.
23 The biggest mistake he made was representing himself in his
24 claim. He should have had a lawyer represent him, but he
25 didn't. He sat down and wrote that 18 or 19 page document to

1 Erie Insurance. He's living with these injuries. He's not
2 objective about it at all. He sits down at a computer and
3 starts to type. Mr. Trabold is exactly right. The statement
4 that he sends is verbose, it's lengthy, it's conflicting, it's
5 got inaccuracies. It isn't done after reviewing medical
6 records. It's just someone sitting at a computer state of
7 mind typing this thing out. Is it 100 percent accurate? It's
8 not. Did it have anything to do with settling this case? No,
9 it did not.

10 Let's talk about what Mr. Trabold talked to you
11 about because he sees this case as a case whether or not
12 Mr. Joyce could golf or not, or dive or not. It's not about
13 that. It's not about that at all.

14 As I told you before, Mr. Joyce is an avid athlete.
15 He goes out and he does things. If they hurt when he does it,
16 he does it until he can't take it anymore and he pays for it
17 later on.

18 He takes medication so that he's able to do it. He
19 is not somebody that is going to sit back and let this get him
20 down. He never told anybody he was an invalid as a result of
21 this accident. What he said was, I have been injured. There
22 are certain things I can't do as well. There are problems
23 that I have and I'm entitled under Pennsylvania law to be
24 compensated. That was the agreement that was reached with the
25 insurance company. He said in his letter -- Mr. Trabold

1 talked about this -- that he was having difficulty golfing.
2 At one point he said he had difficulty finishing rounds. He
3 talked about golfing several times during this period of time.
4 He talked about golfing five times during this period of time.
5 He did golf a number of times during the period beginning in
6 January of 2002. He did not golf between the time of the
7 accident in August 2001 until January of 2002 when he
8 attempted to golf. Some of those golf games he walked off the
9 golf course in the middle of the games because of the pain.
10 Sometimes he had to pick up a ball and knock off a couple of
11 tees. They obtained the records from the golf association
12 which have scores on them. Those of you who know that you
13 have to submit a score after you have completed 11 or 12
14 holes. I'm not a golfer. That's what they told me. That's
15 what he did on a number of occasions. What is really
16 important and what the government didn't tell you was as of
17 July 2002, he quit golfing because of the pain. He stopped
18 all together. And that's not in dispute. What they want to
19 dispute is the number of times he golfed before that. They
20 don't want to talk to you about why did he golf up until July
21 of 2002 before he settled this case and never golfed again.
22 He belonged to Lake Shore Country Club. He quit. He wrote a
23 letter and said, I can't golf anymore because of my injuries.
24 I'm done. With all the thousands and hundreds of thousands of
25 hours they spent on this case, there is nothing that they can

1 present to you to show that he golfed after that.

2 He was done scuba diving. Mr. Trabold spent a lot
3 of time talking about scuba diving. Scuba diving was
4 incredibly important to him before this accident. He is a
5 master diver and a diving instructor. This has taken him
6 hundreds of hours to learn to do this. He takes people and
7 trains them to be scuba divers. Every year he would go on
8 dives to the Caribbean. He would go and he would dive from
9 boats. He would dive on multiple occasions. He did not dive
10 from the time of the accident until the time of the
11 settlement. He dove after that, but the diving was much
12 different. The diving that was done after that were beach
13 dives, not boat dives, and they weren't multiple dives,
14 multiple dives like he used to do. One time he even went and
15 had an epidural needle stuck in his neck before he went to
16 dive. He would take medication because he loved it so much.
17 He would try it and he would do it with pain. Did he dive?
18 Of course he dove afterwards. He tried to dive, but not the
19 way he used to dive.

20 Mr. Trabold talked to you about the certification.
21 In the letter he said he was not certified as an instructor
22 after this. Well, I can tell you what is a given is he never
23 instructed anyone after this again. After this accident, he
24 never ever instructed again.

25 Did he send his form in? Yes, he did. He sent the

1 form in, but what he didn't do was he didn't renew his
2 liability insurance. And in order to be a certified
3 instructor, you have to do both. His liability insurance
4 expired. He did not renew it. Mr. Trabold knows that. He
5 didn't mention it to you.

6 Supreme Court. You'll recall that Mr. Joyce said
7 he had the nomination to the Pennsylvania Supreme Court.
8 Let's talk about this a little bit because it's important.

9 Mr. Joyce is a republican. I'm a democrat. I
10 don't understand their process. When democrats run for
11 courts, they line up 15 candidates, they all run off to the
12 finish line to see who is going to get the nod in the primary
13 election. They beat each other up, somebody gets the nod in
14 the primary, runs in the general and usually loses.

15 Republicans are much more organized. What they do
16 is they work it out in advance. Before they even get to the
17 primary, everybody else drops out, so at the primary they
18 don't have to spend much money. They have one candidate, if
19 there's one opening, and that candidate goes on to run in
20 November and has more assets to run. Republicans are much
21 more organized.

22 In 2000 Mr. Joyce decides he's going to run for the
23 Supreme Court of Pennsylvania. Let me tell you, the Superior
24 Court is below the Supreme Court of Pennsylvania. Everybody
25 on the Superior Court thinks they ought to be on the Supreme

1 Court. As soon as they're elected to Superior Court, the next
2 thing in their mind is how do I get to the Supreme Court.
3 There are 15 of them and they are always jockeying to see who
4 is going to run.

5 Mr. Joyce was a tremendous candidate for Superior
6 Court in 1997. He was the No. 2 vote getter out of eight
7 candidates. Coming from Erie, Pennsylvania, that's not easy.
8 Most votes aren't in Erie, Pennsylvania, they're here in
9 Pittsburgh or in Philadelphia. So when people run from Erie,
10 they have to travel all over the state. They have to work
11 incredibly hard and as republicans, they have to depend on
12 votes in the public areas which are all over the state, not
13 just in Pittsburgh and Philadelphia, which is primarily
14 democrat. Mr. Joyce ran in 1997 and he ran hard and he won.
15 He came in second. He won big.

16 In 2000 he decides he's going to run for the
17 Supreme Court of Pennsylvania. There are several other
18 republican judges from the Superior Court that are interested
19 in running. Now, remember, the accident happens in 2001,
20 August of 2001. This race takes place at the end of 2000 and
21 then the primary takes place in the spring of 2001.

22 The way the republican process works is candidates
23 decide if they're interested and then they appear for various
24 meetings of the leadership of the republican party. That
25 takes place usually in January of 2001.

1 Mr. Joyce goes through that process and he comes
2 out of there with the understanding that he is the candidate,
3 that he's got the nod for the republican nomination, if he
4 wants it. He decides not to run. It has nothing to do with
5 his accident. The accident hasn't even happened yet. He
6 doesn't run because his mother is ill and he drops out.

7 He says to himself, I'm going to take another shot
8 at it in 2003. I'll see what happens, but it's my intention
9 now to at least take a shot in 2003. I may not get the
10 nomination in 2003. I may get the nomination and lose the
11 election, who knows. Politics change on an hourly basis. But
12 it is his intention to take a shot when the next vacancy comes
13 up in 2003.

14 What he says to Erie is, hey, when I have this
15 accident, I can't drive the way I have to be able to drive to
16 campaign. I can't put 50,000 miles on my car in a year. I
17 can't drive out to Warren and back. I can't drive to
18 Harrisburg and back. All these things have to be done to run.
19 Because of my injuries, I can't drive a car. Sure I can drive
20 a car. I can get into an airplane and fly, but I can't do
21 that kind of thing. So, I am not going to run because of this
22 accident. And, if that's something that the jury or the
23 arbitrators or the insurance company want to take into
24 account, certainly they can because that's a loss of life's
25 pleasures. They can discount that entirely if they want. The

1 insurance company can say, we don't know if you're going to
2 win, Mr. Joyce. We don't know if you're going to run in 2003
3 regardless of the accident. We're not going to take that into
4 account or they can take that into account. Insurance
5 carriers do that every single day. Mr. Joyce said in his
6 letter that he had the nomination. He did not. He thought he
7 was going to get it, but he didn't have it. But, the
8 insurance company knew he didn't get it. It's a matter of
9 public record, all they had to do was pick up the newspaper.
10 They knew who was nominated and won the nod. The election was
11 already over by the time Mr. Joyce filed his claim. It's just
12 a red herring.

13 Mr. Trabold spoke to you about rollerblading. Erie
14 Pennsylvania, we have a state park. Mr. Trabold invited you
15 up. I will do the same. Presque Isle State Park is Erie's
16 biggest attraction. It's flat. It's beautiful. It's on the
17 beach. This is where we go to socialize as people living in
18 Erie in the summer months. It gets us out of the house.
19 There are paths out there. This isn't competitive
20 rollerblading by any stretch of the imagination. Did
21 Mr. Joyce go out and rollerblade? You bet he did. He went
22 with other people. This is one of the most public areas in
23 Erie. This was no attempt to hide this. None whatsoever.
24 There's nothing wrong with it.

25 Did he go to Nautilus? Absolutely. That's the

1 first thing doctors tell you to do, get moving, exercise, do
2 something. He wasn't doing the things that he was doing
3 before the accident, but was he going to Nautilus?

4 Absolutely. He was going to Nautilus. No question about it.

5 Flying. Ladies and gentlemen, in the spring of
6 2002, Mike Joyce decides that he was going to learn how to
7 fly. The reason he did it was he felt he's now restricted in
8 some of the athletic stuff that he'd like to do. So he
9 decides he's going to try to fly. I can tell you, flying is
10 like driving a car. It doesn't take a Herculean effort and it
11 don't take intense concentration. It's not like sitting
12 reading briefs, digesting briefs, digesting opinions. It's
13 something you get in and you learn to fly. He did. He
14 definitely did. He never tried to hide that from anyone. He
15 was very public about it. He went to the airport located by
16 his office near the airport in Erie, Pennsylvania, and he
17 learned how to fly.

18 Now, what did he do in terms of that FAA form that
19 Mr. Trabold talked to you about? Mr. Trabold told you he
20 filled out this FAA form on April 8, 2002, and he did. Down
21 here they asked him to list all the doctors that he had seen
22 in the last three years. He lists only the person that did
23 his gallbladder surgery, Dr. Wardan. Up here they ask for
24 medications. He didn't list those. There is also a block
25 here about neurological disease. This is not accurate. I can

1 tell you it's not accurate. Mr. Joyce isn't here on trial for
2 this form. He should have checked the box. He should have
3 filled in that information. No question about it. But that's
4 not what this case is about at all. Know why he filled that
5 out the way he did? He wanted to fly. Next year or two years
6 later he filled out the form the same way. He wanted to fly.
7 Was he wrong? Should he have been more accurate in that form?
8 Absolutely he should have been.

9 Ladies and gentlemen, the medical evidence in this
10 case is clear. Mr. Trabold told you to ignore the medical
11 evidence, that it wasn't important. And the reason he told
12 you that is he doesn't want you to look at the medical
13 evidence. He wants you to look at golf things, scuba diving
14 and all these things that he thinks are inconsistent.

15 But the important thing is the medical evidence.
16 Insurance companies will tell you, and many of you know this,
17 that's what they focus on. That's what is in his files.
18 That's how they evaluate a claim based upon the medical
19 evidence.

20 The medical evidence in this case will show that he
21 had this prior cervical fusion. It will show that there were
22 degenerative changes above and below the fusion. It will show
23 that there was encroachment on his nerves and it will show
24 that he had pain. He had neck pain. He had back pain. The
25 MRI shows a disk, a lumbar disk as well as this.

1 Unquestioned. It's there. Unquestioned he had pain.

2 Unquestioned he didn't tell you about it because he didn't
3 want you to know about it.

4 Ladies and gentlemen, did he have fasciculations?

5 Did he have these little twitching things? He did. The

6 doctors saw him. He didn't know where they came from. He

7 didn't have them before the accident. He got them after the

8 accident. Doctors told him it was from the accident.

9 Probably no big deal.

10 But one of the things he was concerned about was

11 the Lou Gehrig's disease. Lou Gehrig's disease is not caused

12 by motor vehicle accidents. Nobody ever suggested that to

13 anyone. Was he able to function with these things? Of course

14 he was able to function. Did it weigh on his mind, maybe I do

15 have Lou Gehrig's disease? Yeah, it did. It would weigh on

16 anyone's mind. That's why he went to the Cleveland Clinic to

17 check it out. If he's just doing that because of the

18 settlement, why in 2004 does he go to Dr. DeMatteis saying, I

19 still have these fasciculations. Do I have Lou Gehrig's

20 disease? He's concerned about it. Is the concern realistic?

21 I don't know. I don't know. If you had it, maybe you

22 wouldn't think so. Maybe some of you would. But it's a

23 horrible disease and he was worried about it. Who is going to

24 fault him for that?

25 What is clear, what is clear in this case and what

1 the evidence will show is that Michael Joyce was rear-ended in
2 a motor vehicle accident. He didn't see it coming. He
3 doesn't know how fast the person hit him. But he was hit from
4 behind through no fault of his own. What is clear is that he
5 had injuries as a result of that accident. What is clear is
6 that it impacted him. The degree of how it impacted him, we
7 can argue about from here to the moon, but it impacted him.
8 And he believed he was injured. He was injured. He did not
9 intend to defraud anyone. There is not evidence of any scheme
10 to defraud. There is no evidence of an intent to defraud.
11 There is no evidence of money laundering.

12 At the end of this case, you all are going to have
13 to take all of the evidence and put it together. Mr. Trabold
14 talked about a puzzle. It is a puzzle. The government has to
15 put that puzzle together for you and convince you beyond a
16 reasonable doubt that this man committed these crimes and they
17 can't do it when they take pieces of the puzzle and put them
18 in their pocket. The cervical fusion. He doesn't want you to
19 take a look at that. He doesn't want you to consider the
20 medical records.

21 Ladies and gentlemen, use your common sense, but
22 remember, this case is extremely important to this man, to
23 this man's family. I know you'll do the right thing and at
24 the end of this case, you'll find him not guilty of these
25 charges. Thank you.

1 THE COURT: Looks like a good time for our
2 afternoon break, ladies and gentlemen. We'll reconvene at
3 three o'clock.

4 (Whereupon, there was a brief recess in the proceedings.)

5 THE COURT: Mr. Trabold.

6 MR. TRABOLD: Your Honor, the United States calls
7 Dr. Robert Shields.

8 THE COURT: Come forward and be sworn, please.

9 ROBERT W. SHIELDS, JR., M.D., a witness having been duly
10 sworn, testified as follows:

11 THE COURT: Have a seat up there. Give us your
12 name and spell your last name.

13 THE WITNESS: My name is Robert W. Shields, Jr.,
14 S-H-I-E-L-D-S.

15 DIRECT EXAMINATION

16 BY MR. TRABOLD:

17 Q. Sir, where are you employed?

18 A. I'm employed at the Cleveland Clinic in Cleveland, Ohio.

19 Q. What do you do there?

20 A. I'm a neurologist.

21 Q. Can you explain to the ladies and gentlemen of the jury
22 what a neurologist -- what you do medically?

23 A. Yes. A neurologist is a subspecialty of medicine that
24 deals with diseases of the nervous system, the brain, the
25 spinal cord and nerves and muscles. So, a neurologist

1 diagnoses and treats these conditions.

2 Q. Can you tell us what the autonomic lab at the Cleveland
3 Clinic is.

4 A. The autonomic lab deals with the autonomic nervous system.
5 It's another part of the nervous system that controls heart
6 rate, blood pressure and other functions of the body and we
7 have a laboratory there that does special tests to diagnose
8 these conditions.

9 Q. In your capacity as a neurologist at the Cleveland Clinic,
10 did you have the opportunity to examine and have an
11 appointment with a person by the name of Michael Joyce?

12 A. Yes, I did.

13 Q. Did that occur on May 3rd of 2002?

14 A. That's correct.

15 Q. Can you share with the ladies and gentlemen of the jury
16 your recollection of how it is that Mr. Joyce came to see you.

17 A. My recollection is really based on my clinical notes
18 because I don't have an independent recollection of that
19 visit. I have to kind of reconstruct it from my notes at that
20 time.

21 He was referred by Dr. DeMatteis for an opinion
22 about fasciculations and other neurologic symptoms he was
23 experiencing.

24 Q. You mentioned your notes and I want to show you now what
25 I've marked as Government's Exhibit No. 53.

1 MR. TRABOLD: Your Honor, just so you're aware,
2 obviously, we were forced essentially by virtue of conflicting
3 schedules to take witnesses out of order.

4 THE COURT: This is 53?

5 MR. TRABOLD: 53, Your Honor.

6 BY MR. TRABOLD:

7 Q. Let me show you that and ask you to identify it. That is
8 Exhibit 53.

9 A. This is a letter that I wrote to Dr. DeMatteis after my
10 consultation with Judge Joyce on May 3rd, 2002, which included
11 the history, the examination and the results of testing that
12 we performed at the Cleveland Clinic, and then my conclusions
13 and recommendations.

14 Q. Let me just back you up for one second. You mentioned the
15 medical term fasciculations. That's part of the reason why
16 you saw Mr. Joyce. Could you explain to the ladies and
17 gentlemen of the jury what a fasciculation is.

18 A. A fasciculation refers to a painless, isolated muscle
19 twitch or a muscle might twitch or jump on its own.

20 Q. Now, Mr. Joyce comes in to see you. Prior to actually
21 sitting down and undergoing examination from you, does he
22 undergo some testing?

23 A. Yes.

24 Q. What would the testing of Mr. Joyce have consisted of?

25 A. He underwent some laboratory tests, a blood test and an

1 EMG test.

2 Q. Let's take the blood test first. Why is it that you would
3 have drawn blood from Mr. Joyce and tested it?

4 A. Basically, to look for some common and very treatable
5 conditions that might cause symptoms that he was experiencing.

6 Q. The EMG, can you explain to the ladies and gentlemen of
7 the jury what an EMG -- first of all, what it is, and then why
8 you do an EMG?

9 A. An EMG, it stands for electromyography. It's a test
10 that's designed to help diagnose nerve and muscle conditions,
11 conditions of the nerves that run in the arms and legs and the
12 muscles.

13 It consists of two parts. The first part is a
14 nerve conduction test where electrodes are placed over nerves
15 and muscles in the arms and legs and a stimulator is used to
16 stimulate a nerve. Typically, around the wrist or the elbow
17 in the arm. Typically, at the ankle or the knee in the leg.
18 The nerve is stimulated and we measure the response of the
19 nerve. So it's a way of detecting problems that affect the
20 nerves that run in the arms and legs.

21 The second part of the test is the needle electrode
22 exam. That part of the test involves taking a special pin
23 electrode and inserting it into various muscles and measuring
24 the electricity that the muscle is generating.

25 We examine and design the test according to the

1 nature of the problem that we're addressing, and we combine
2 both the results of the nerve conductions and this needle
3 electrode examination together to form a conclusion as to the
4 nature of what we learn from the test and what it means
5 clinically.

6 Q. Now, as a result of the -- after he undergoes the testing,
7 does he then have an evaluation performed by you?

8 A. Yes. I'm not actually clear how the sequence was on that
9 particular day. My notes -- as I recall, I saw him first and
10 then these tests followed. That's my recollection, but I
11 might be wrong.

12 Typically when we see patients who are coming from
13 out of the city or certainly out of state, we prearrange tests
14 that we think would be helpful for convenience in scheduling.
15 I think, typically, I would see the patient first and then the
16 tests are scheduled afterwards so if there's a change in the
17 focus of the test, I can do that after I see the patient.

18 Q. And with a patient coming to you for the issues that
19 Mr. Joyce was coming to you for, what is it that you do when
20 you actually examine him?

21 A. Well, a part of my examination begins by a history, that
22 is, to interview the patient about the symptoms that they're
23 having and learn more about those. And also ask other
24 questions about symptoms they may not be talking about but
25 would be relevant to understanding the problem. And then

1 performing a neurological examination.

2 Q. Did you perform a neurological examination of Mr. Joyce?

3 A. Yes, I did.

4 Q. What does that consist of? What is it you actually do
5 with the patient?

6 A. The examination assesses many different functions. First
7 of all, there's an assessment of the patient's mental status,
8 are they able to answer basic questions and recall their
9 symptoms accurately? It's an index of their memory and
10 ability to understand and communicate.

11 And then we move on to the cranial nerve
12 examination, which measures function of vision and eyes,
13 muscles that revolve around chewing, swallowing and talking.
14 These are called the cranial nerves.

15 Then, typically, we do a motor system exam, which
16 means inspecting the muscles over the arms and legs and chest
17 and abdomen, checking strength and tone of muscles, checking
18 reflexes, things of this sort.

19 Then the other part of the neurologic examine is to
20 measure sensation, the ability of the patient to feel certain
21 sensations like pin or light touch or vibration and things of
22 this sort.

23 Then there's a test of coordination of the arms and
24 legs. And then usually a test of gait, how does a patient
25 walk, are they demonstrating normal balance and coordination

1 with standing and walking.

2 Q. Was your neurologic assessment of him essentially normal?

3 A. Yes. My examination disclosed a few fasciculations in
4 scattered muscles in the arms and legs. And I don't believe
5 there were any other -- I should take a look at my notes here
6 to be sure.

7 There was a fine tremor of the outstretched hands a
8 little more prominent on the right than the left, which is an
9 involuntary tremulous movement that I thought was very modest.
10 And the remainder of the exam, except for the fasciculations
11 and that tremor, I thought was normal.

12 Q. With regard to his gait and station, was that remarkable
13 for any reason?

14 A. I indicated gait and station are unremarkable. And Judge
15 Joyce was able to walk on his heels and toes and perform a
16 deep knee bend without difficulty.

17 Q. Now, did you deem the fasciculations that you found to be
18 a pertinent or significant medical finding?

19 A. Well, at the time, I did not see any other features on the
20 examination that would make me concerned about the
21 fasciculations. Judge Joyce did not complain at this time of
22 weakness in the arms or legs or progressive weakness. It
23 would be a greater concern for the significance of the
24 fasciculations.

25 Q. Can even healthy people have fasciculations?

1 A. Yes.

2 Q. In your report, at the tail end of your report you
3 characterize the fasciculations as benign fasciculations.
4 What do you mean by that?

5 A. Well, again, fasciculations are important only in the
6 company they keep. If fasciculations are associated with
7 weakness, then it can be a serious sign of an underlying
8 muscle disease or nerve disease called ALS. But many normal
9 patients or normal subjects I should say have fasciculations
10 that are not accompanied by weakness or other features and
11 their neurologic examinations and oftentimes EMG examinations
12 are normal. In those situations, we refer to these as benign
13 fasciculations.

14 Q. Because they're not associated with any other medical
15 malady?

16 A. That's correct.

17 Q. With regard to the issue of ALS as it relates to
18 Mr. Joyce, did you deem that to be an issue involving him at
19 all?

20 A. No.

21 Q. Why?

22 A. Because the fasciculations were not accompanied by
23 symptoms of weakness. I did not find weakness on his
24 neurological examination and the EMG testing, which is an
25 extremely sensitive test for detecting underlying nerve and

1 muscle disease, was nonsupportive of the changes you would see
2 in a patient with ALS.

3 Q. Did the EMG test reveal any significant problems with
4 Mr. Joyce?

5 A. The EMG showed fasciculations in two muscles and some
6 chronic changes in two muscles in the arm that were
7 interpreted as consistent with a prior history of a cervical
8 spine injury for which Judge Joyce had a cervical spine
9 operation I think in 1991.

10 Q. Now, when you use the word "chronic," what do you mean by
11 that? What does that mean, chronic?

12 A. Well, in terms of electromyography, which was the test
13 that was used to define this, chronic means that if a nerve
14 was injured and we're seeing the residual changes of that
15 injury, the injury would have to occur at least six months
16 before the test was done. In that case, anything that would
17 have happened six months before, or much longer before, six
18 months or longer, we would see those changes and assume that
19 they are at least that old. We refer to that as a chronic
20 change, not an acute or very recent change.

21 Q. Did you notice any acute or did your testing uncover any
22 acute changes or acute problems with Mr. Joyce?

23 A. No.

24 Q. Can you give us a time frame as it relates to acute
25 changes, when you would expect to see those or when those

1 would be revealed?

2 A. Well, acute changes on the EMG test are defined by
3 fibrillation potentials. These are changes in muscle that you
4 find on the needle electrode exam. You put this needle in the
5 muscle and you see these spontaneous discharges in the muscle.
6 And they occur approximately three weeks after an acute injury
7 of a nerve. It goes to that particular muscle. So, if you do
8 the test at least three weeks after a potential injury and you
9 see these fibrillation potentials, it implies that there's
10 been some acute injury to the nerve that supplies that muscle.
11 Fibrillations once they are present sometimes can last for
12 many, many years. They don't completely go away. Sometimes
13 they will go away three to six months later. So it's quite
14 variable.

15 Q. Now, in reviewing Mr. Joyce's history, did you take note
16 that he had some EMG testing close in time to mid August or
17 I'm sorry, September of 2001?

18 A. Yes.

19 Q. Did your review of that testing reveal the testing in
20 September of 2001 to reveal chronic problems or acute
21 problems?

22 A. The changes were predominantly of a chronic nature in the
23 right arm, similar to what we found on our EMG test.

24 Q. Those chronic changes would then relate to an event
25 distant in time from September 2001?

1 A. Yes.

2 Q. How long a period of time did you spend in Mr. Joyce's
3 presence, if you recall?

4 A. A typical new patient visit for me is at least an hour and
5 sometimes a little longer.

6 Q. When we -- just so the jury is clear, when we're
7 referencing ALS, is that the same thing as Lou Gehrig's
8 disease?

9 A. Yes.

10 Q. Now, did you detect when you examined Mr. Joyce or through
11 the testing any current or ongoing problems with him at all?

12 A. The -- many of the symptoms that he presented with at the
13 time I saw him had resolved, and the key issue was the
14 fasciculations that he was experiencing. I think that was how
15 I viewed this. And I did not see anything else that would be
16 of an acute nature at that time.

17 Q. Did you deem the fasciculations to be medically
18 significant?

19 A. No.

20 Q. In your exam note you make reference to a seat belt thigh
21 injury. Can you explain to the ladies and gentlemen of the
22 jury how that found its way into your report.

23 A. You know, I think that at the time I was interviewing
24 Judge Joyce, he mentioned that after the accident he developed
25 pain in his back and also had pain in his left thigh and an

1 area of numbness in the thigh, and he was in an accident as a
2 restrained person with a seat belt. And I think his concern
3 was that the seat belt may have compressed a nerve in his
4 thigh. At that time, though, those symptoms had essentially
5 resolved. They were not active and I did not really pursue it
6 any further.

7 Q. Did you find any medical basis for the symptoms which
8 Mr. Joyce was sharing with you?

9 A. The only -- again, the major symptoms were the
10 fasciculations, and I think that clinically and via the EMG
11 testing, I concluded that these were benign fasciculations and
12 not related to any other nerve or muscle disease.

13 Q. At the conclusion of your exam, did you feel as if you
14 were giving Mr. Joyce good news or bad news medically?

15 A. Well, certainly my sense is that the results of my testing
16 was very good news. I can't remember if I met with him after
17 the testing or not. My letter certainly was copied to him.
18 It was addressed to Dr. DeMatteis, who was the referring
19 physician, and we always copy our communications to the
20 patient. They get the exact letter report. I'm not sure if I
21 actually spoke to him or not at the time of the testing.

22 Q. Can I direct your attention to Page 2 of your exhibit.
23 I'll let you keep the one we've marked as Government's 53. I
24 have another copy of it here to put it on the document reader.

25 Do you see that paragraph at the bottom where it

1 begins "certainly"?

2 A. Yes.

3 Q. Can you read that for the jury, please.

4 A. "Certainly, Judge Joyce's neurological evaluation here has
5 been essentially negative. I find no evidence of a
6 significant underlying neurologic disorder to account for his
7 symptoms. I suspect that the fasciculations that he has
8 noticed represent benign fasciculations. Clearly he has
9 residual changes from cervical radiculopathy, but there are no
10 signs of active or ongoing problems at this time.

11 Q. Can you explain to the ladies and gentlemen of the jury
12 cervical radiculopathy?

13 A. Cervical radiculopathy refers to a nerve being pinched in
14 the neck, usually from a disk or some type of arthritic
15 problem such that the nerve is injured and may cause pain that
16 shoots down the arm or cause weakness or numbness in the hand
17 or the arm.

18 Q. Do you deem the cervical radiculopathy finding to be
19 chronic or acute?

20 A. Chronic.

21 Q. Doctor, is there any objective test medically for pain?

22 A. No.

23 Q. So any report of pain, would that be a subjective or an
24 objective reporting from the patient?

25 MR. FRIEDMAN: Objection, Your Honor.

1 THE COURT: No, I think that's a generic question.
2 We'll permit it.

3 A. I think pain is typically a subjective symptom that a
4 patient communicates, but there is not an objective test that
5 can confirm that or to accurately measure that. It's a
6 symptom that you simply take as a patient's complaint.

7 MR. TRABOLD: Thank you, sir.

8 Nothing further, Your Honor.

9 THE COURT: You may cross-examine.

10 MR. FRIEDMAN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FRIEDMAN:

13 Q. Dr. Shields, my name is Philip Friedman and I represent
14 Mr. Joyce.

15 If I understood you correctly, you have no
16 recollection of visiting with Mr. Joyce; is that correct?

17 A. I don't have any independent recollection, that's correct.

18 Q. Really, you're just testifying as to what's in your
19 letter; is that correct?

20 A. That's right.

21 Q. Now, Dr. DeMatteis referred Mr. Joyce to you, correct?

22 A. That's correct.

23 Q. And you're at the Cleveland Clinic, correct?

24 A. That's right.

25 Q. That would be one of the finest medical institutions in

1 the country, correct?

2 A. I hope so.

3 Q. Second to UPMC, of course.

4 A. We're in Pennsylvania here, aren't we?

5 Q. You're in UPMC country.

6 Dr. DeMatteis has referred other patients to you,
7 correct?

8 A. That's correct.

9 Q. And the reason that he referred Mr. Joyce to you was
10 because of the fasciculation issue, correct?

11 A. That's right.

12 Q. Mr. Joyce had the fasciculations and was very concerned
13 about them, correct?

14 A. That's right.

15 Q. And as far as you recall, one of the things Mr. Joyce and
16 Dr. DeMatteis were concerned about was the potential for ALS,
17 Lou Gehrig's disease, correct?

18 A. Yes. That's always the implication when the patients are
19 referred with fasciculations.

20 Q. That's a scary diagnosis, correct?

21 A. Yes, it is.

22 Q. In fact, that's probably the scariest diagnosis that you
23 deal with, correct?

24 A. It's one of them.

25 Q. So when Mr. Joyce came over to see you, it was because of

1 his concern about the possibility of having ALS, correct?

2 A. Yes.

3 Q. And certainly when you examined him, you came to the
4 conclusion that he did not in fact have ALS, correct?

5 A. That's right.

6 Q. That's not to say that he could get ALS in the future, you
7 can't predict that one way or the other, correct?

8 A. That's correct.

9 Q. So if I understand you correctly, he comes over, you see
10 him, take a history from him, correct?

11 A. That's right.

12 Q. And then you put him through various diagnostic tests,
13 correct?

14 A. That's correct.

15 Q. Including the EMGs that you talked about, correct?

16 A. That's right.

17 Q. Now, you certainly would not have put him through that EMG
18 procedure had you come to the conclusion that there was no
19 chance of any ALS or any serious diseases, correct?

20 A. That's right.

21 Q. You wanted to check it out, right?

22 A. That's correct.

23 Q. And so your concern was shared with Mr. Joyce that maybe
24 you do have something more serious than just benign
25 fasciculations, correct?

1 A. Right. It's a very common circumstance for us to see
2 patients with fasciculations. And even if there isn't any
3 supportive weakness or other findings on the neurologic
4 examination, almost invariably we do the EMG testing to either
5 discover that there is ALS, or to reassure the patient that
6 the test is negative for that disease.

7 Q. Now, the EMG procedure is not a pleasant procedure, is it?

8 A. No.

9 Q. You said there's two EMGs, one is -- does the one involve
10 just putting electrodes on top of the skin?

11 A. The first part, the nerve conduction studies, the
12 electrodes are taped or put on fingers with a little circular
13 type of ring and the nerve is stimulated to evoke a response.

14 The second part of the test, as I mentioned, is the
15 needle electrode part where the needle is inserted in various
16 muscles and the electricity of the muscle is measured.

17 Q. Just looking at the first test, is that a painful
18 procedure?

19 A. Well, it's a shock. It's much like -- we educate patients
20 about the test, we tell them it's like touching a door knob in
21 a dry room in the winter and you get a little static
22 electricity shock. It's that kind of feeling. Some people
23 are very sensitive to it, others are not. But it's
24 unpleasant.

25 Q. How many of those shocks would you administer in the

1 course of the evaluation, any idea?

2 A. Well, it's hard to say. Numerous nerves are typically
3 examined in the arm and the leg when we're evaluating for
4 fasciculations and possible ALS, so it's many, many shocks in
5 different locations.

6 Q. Now, as far as the other test goes, that actually involves
7 putting needles in the skin; is that correct?

8 A. That's correct.

9 Q. And certainly that's a painful process?

10 A. It's uncomfortable for sure.

11 Q. How many needles were actually inserted? Can you tell the
12 ladies and gentlemen that?

13 A. I'm not certain, but it would be typically in the range of
14 15 to maybe up to 20 muscles were examined on average.

15 Q. It would take 15 to 20 injections?

16 A. Insertions. Nothing is really injected. It's an
17 electrode.

18 Q. Once those are placed into the skin, are shocks then
19 administered or not?

20 A. No. The needle part actually goes through the skin, but
21 it's in the muscle itself and there's no shock or injection
22 for that part of the test. The needle is in the muscle and
23 the patient is asked either relax or to activate the muscle so
24 we can see the muscle when it's relaxed and when it's
25 contracting. And the needle is moved in different locations

1 several times during that process of examining a single
2 muscle.

3 Q. You, in fact, did detect fasciculations, correct?

4 A. Well, I did not perform the test. My colleague,
5 Dr. Levin, did, and he reported that there were fasciculations
6 in two muscles during that examination.

7 Q. You indicated also when you did the examination of him
8 that he had a tremor in his hand; is that correct?

9 A. Yes.

10 Q. Now, Doctor, in your clinical findings in your letter, you
11 indicate that there are clinical features suspicious for a
12 partial injury of the lateral femoral cutaneous nerve of the
13 left thigh?

14 A. Yes.

15 Q. You thought that that was most likely related to a seat
16 belt injury; is that correct?

17 A. Yes. I think that those symptoms in that distribution
18 would correspond to a lateral femoral cutaneous nerve and I
19 think that Judge Joyce expressed concern from something he may
20 have experienced at the time of the accident that it was the
21 seat belt that may have dug into his proximal leg or groin
22 area that may have caused it. There must have been some
23 injury at that time for me to speculate about it at that time.

24 Q. Now, you also indicated on direct examination that you did
25 find radicular symptoms; is that correct?

1 A. There were no symptoms in terms of his complaints at the
2 time that I thought were evidence of radiculopathy. The EMG
3 test, though, showed changes in the right arm in two muscles
4 that Dr. Levin interpreted as consistent with a remote
5 radiculopathy.

6 Q. That would be consistent with a cervical nerve
7 compression, correct?

8 A. That's correct.

9 MR. FRIEDMAN: Thank you, Dr. Shields. That's all
10 I have.

11 REDIRECT EXAMINATION

12 BY MR. TRABOLD:

13 Q. Doctor, I just want to draw your attention to Page 2 of
14 your report up at the top. Just briefly, where it indicates
15 the sentence beginning: MRI imagining of the cervical spine?

16 A. Yes.

17 Q. Can you indicate what that reads in your report.

18 A. MRI imagining of the cervical spine was re-assessed in
19 February 2002, and was essentially unremarkable except for the
20 chronic changes of cervical fusion.

21 MR. TRABOLD: One moment, Your Honor.

22 Q. Does your report make any mention of a limited cervical
23 range of motion?

24 A. No, it does not.

25 MR. TRABOLD: Nothing further, Your Honor.

1 MR. FRIEDMAN: Excuse me, Your Honor. If I could
2 have one more question.

3 RECROSS-EXAMINATION

4 BY MR. FRIEDMAN:

5 Q. Did you actually test for that?

6 A. I don't remember if I did or I didn't because I didn't
7 write it down. I typically would, but I can't recall because
8 I didn't document it.

9 Q. If you didn't test for it, it wouldn't be in here,
10 correct?

11 A. That's correct.

12 MR. FRIEDMAN: Thank you.

13 THE COURT: Thank you, sir.

14 MR. TRABOLD: Your Honor, the United States calls
15 Ron Habursky.

16 THE COURT: Are you offering Exhibit 53?

17 MR. TRABOLD: We would move for admission of
18 Government 53.

19 MR. FRIEDMAN: No objection.

20 THE COURT: I'll assume that there's no objection.
21 You don't need to say that each time. I'll just assume
22 there's no objection unless there is an objection.

23 MR. TRABOLD: Your Honor, just for ease of
24 administration, do you want us to separately provide you that
25 document, or are you just going to rely on your books?

1 THE COURT: I'll rely on my books.

2 RONALD HABURSKY, a witness having been duly sworn,
3 testified as follows:

4 THE COURT: Have a seat up here. Give us your name
5 and spell your last name.

6 THE WITNESS: Ron Habursky, H-A-B-U-R-S-K-Y.

7 DIRECT EXAMINATION

8 BY MR. TRABOLD:

9 Q. Sir, is it accurate to say that you are retired?

10 A. Yes.

11 Q. Where did you retire from?

12 A. Erie Insurance Exchange.

13 Q. How long did you work there?

14 A. Second career, 31 years.

15 Q. When you retired, what position did you hold with the
16 company?

17 A. Litigation specialist.

18 Q. How long were you a litigation specialist with Erie
19 Insurance?

20 A. Since 1978.

21 Q. Can you explain to the ladies and gentlemen of the jury
22 what your duties and responsibilities were as a litigation
23 specialist?

24 A. Basically, my -- I considered myself a liaison between
25 defense counsel and the company. My job entailed supervising

1 lawsuits and that were filed against our insureds or against
2 the company. We assign those lawsuits to defense counsel and
3 I worked directly with defense counsel.

4 I also negotiated settlements and took part in
5 settlement negotiations in court, sat through trials and
6 handled uninsured and underinsured motorist claims.

7 Q. Is it fair to say you typically became involved in a case
8 when litigation was involved or it appeared as if litigation
9 might become involved?

10 A. Generally when a complaint was filed in a civil action or
11 a request for arbitration in an underinsured or uninsured
12 motorist claim.

13 Q. The ladies and gentlemen of the jury might be familiar
14 with the term "insurance adjuster." How did your job differ
15 from that of an insurance adjuster?

16 A. I did not do any outside investigations.

17 Q. You mean insurance investigations?

18 A. Yes.

19 Q. Now, sometime in 1985, did you take on the added
20 responsibility of underinsured motorists issues?

21 A. In 1985, there was a change in the law where we went from
22 GAP coverage in Pennsylvania to excess. What that did was
23 generate more underinsured motorist claims.

24 Q. Can you explain to the ladies and gentlemen what an
25 underinsured motorist claim is.

1 A. If the at-fault party has insufficient limits to pay for
2 the damages, then -- injury damages, then the insured can go
3 to his own carrier and collect, if they have the coverage,
4 collect money from their own policy for the amount not covered
5 by the underlying policy, liability policy.

6 Q. So the insured motorist basically goes to their own
7 insurance carrier and taps into their underinsured motorist
8 provision of their own policy?

9 A. Yes.

10 Q. Around the time you retired, were you involved in a lot of
11 underinsured motorist issues or claims?

12 A. Since -- I would say in the late '80s, early '90s, I had a
13 fair number of active cases.

14 Q. Were a fair number of them underinsured motorist cases?

15 A. Most of them were underinsured as opposed to uninsured.

16 Q. Do the underinsured motorist cases have a level of
17 complexity or difficulty to them that the typical negligence
18 one would not have?

19 A. No. It's -- well, basically, in those cases, most of the
20 time there aren't liability issues, so you're dealing with
21 settlement of injury claims.

22 Q. Is there an arbitration issue that is involved with the
23 underinsured motorist claims?

24 A. At that time, yes.

25 Q. Can you explain what that arbitration issue or process is

1 to the ladies and gentlemen of the jury.

2 A. If an injured party -- normally, I receive files through
3 their attorneys. They would indicate that they wanted to
4 present an underinsured motorist claim and proceed to
5 arbitration. Under the policy, the insured or injured party
6 would select a party to represent them. We would assign it to
7 defense counsel and with defense counsel discussions, we would
8 assign or retain an attorney to represent or be our
9 arbitrator, and then those two would choose a third
10 arbitrator. In most cases -- in every case I dealt with, the
11 arbitrators were attorneys.

12 Q. Are the arbitrators drawn -- how do they -- what
13 geographic area do they draw the arbitrators from?

14 A. It varied. There's -- we -- our office handled probably
15 10, 12 counties and we had claims throughout those counties.
16 So we tried to select an arbitrator within the county where
17 the arbitration would take place. Under the policy, the
18 arbitration would take place where the injured or insured
19 party lived.

20 Q. So ordinarily if a claim arose in let's say Erie County,
21 in your experience, the arbitrators would be ordinarily drawn
22 from Erie County?

23 A. Yes.

24 Q. Now, can you explain how the claims process works kind of
25 from start to finish. Your claim comes into you that you need

1 to review. What do you then do? What is the first thing you
2 do when that claim comes in?

3 A. Well, I look to see what -- generally, I review the file
4 notes of the previous claim handler, determine what was in the
5 file, reviewed the file and determined if there was anything
6 additional that needed to be done before evaluating the case.

7 Q. In your experience, your typical claim, if such a thing
8 even exists, how long would it take you from start to finish
9 to finish the matter?

10 A. That varied. It could be -- if you had all the
11 information to evaluate, you could do it immediately. If you
12 have to obtain information through a discovery type system, it
13 could take months. I've had them last years.

14 Q. And I guess -- let's limit it to the last let's say five
15 or ten years you worked for Erie Insurance. On average, how
16 many cases or claims or files I guess would be being handled
17 at any given time?

18 A. Well, I handled both the uninsured, underinsured and also
19 liability files, so at any one time, I probably had anywhere
20 from 90 to 125 active files.

21 Q. Those 90 to 120 files are cases that you need to keep
22 moving through the system to a resolution of some sort?

23 A. Yes.

24 Q. Now, what would you characterize as the claimant's duties
25 when they file a claim with the insurance company, with Erie

1 or any other insurance company?

2 A. Provide information to prove their claim.

3 Q. And to tell the truth about the information?

4 A. Yes.

5 Q. And is it the claimant's duty to provide as complete a set
6 of information as they can?

7 A. Yes.

8 Q. Now, in a payment situation, when you make the decision or
9 when you made the decision when you worked for Erie Insurance
10 to pay a claim, was that claim just for the claimant's
11 injuries, or was that also for the -- to compensate the
12 claimant for the impact those injuries had on their life?

13 A. Well, could be a combination of everything. There's a lot
14 of different factors in each case.

15 Q. Can you explain, what is the issue of bad faith as it
16 relates to this underinsured motorist issue or claim that
17 you've already described?

18 A. Well, when a carrier arbitrates a case, when it actually
19 goes to arbitration and three arbitrators hear the case and
20 render their decision, if -- well, there's a lot of different
21 scenarios, but if their award would be let's say in excess of
22 the available underinsured policy limits, there is a
23 possibility that bad faith can be filed after that hearing and
24 alleged -- I've seen them where the injured party was forced
25 to go to arbitration to collect their money, therefore, they

1 should be entitled to collect the excess and also punitive
2 damages against the carrier for bad faith handling. In all
3 cases, we're under obligation of good faith on handling with
4 the insureds.

5 Q. Is it fair to say then that the bad faith issue is
6 something that is significant to any insurer?

7 A. Yes.

8 Q. And does that have anything to do with the fact that it
9 exposes the insurer to a higher exposure to liability, I
10 guess?

11 A. Well, I don't know.

12 Q. From a sense of punitive damages and that type of thing?

13 A. Now are we talking underinsured or liability?

14 Q. Underinsured.

15 A. There's no risk to an insured in an underinsured
16 situation.

17 Q. Explain that.

18 A. Well, if there is -- if there's a punitive award out of a
19 bad faith suit, the punitive award is against the insurer, not
20 the insured.

21 Q. Is against the insurance company?

22 A. Yes.

23 Q. So that's why it would be significant to the insurance
24 company?

25 A. Yes.

1 Q. Were you involved in the handling of Michael Joyce's
2 underinsured motorist claim which came to Erie Insurance in
3 August of 2002?

4 A. Yes.

5 Q. You mentioned before that file notes are placed in Erie
6 Insurance files?

7 A. Yes.

8 Q. Can you explain to the ladies and gentlemen of the jury
9 what is a file note, as you understand it to be from Erie
10 Insurance lingo?

11 A. Most carriers have switched to electronic file notes. In
12 the old days when I first started, we used to hand write all
13 the notes into the files. Now, they have word processing
14 centers where you dictate notes, and you dictate notes
15 according to what activity you do on a file, summarizing
16 files, whatever. Myself, I didn't like the word process
17 system so I hand typed my own notes in the system most of the
18 time.

19 Q. Are the file notes in your experience kept by the
20 insurance, by Erie Insurance in the normal course of business?

21 A. Yes.

22 Q. If you go into any file with Erie Insurance there are
23 going to be file notes in there?

24 A. Yes.

25 Q. It's just basically a way for the person handling the

1 claim to write their notes in the file?

2 A. Correct.

3 Q. I'm going to show you now -- you should be able to read it
4 up there on the monitor. This is what I've marked as
5 Government's Exhibit No. 2. Can you see that there?

6 MR. FRIEDMAN: What is the date on that?

7 MR. TRABOLD: 8-20-02.

8 BY MR. TRABOLD:

9 Q. Can you read that, sir?

10 A. I can read it.

11 Q. Is that a file note that you would have drafted?

12 A. No.

13 Q. How do you know that?

14 A. Just by the adjuster code H173, which was not my code.

15 Q. Yours was E111?

16 A. Yes.

17 Q. Now, can you read for the ladies and gentlemen of the jury
18 what that says in that file note.

19 A. Judge Joyce called in yesterday. He's anxious for someone
20 to contact him reference his UIM, which is underinsured claim.
21 Kevin Nelson WAS the last name I saw on there yesterday. I
22 left him a voice mail. Never heard back from him. I see now
23 that it has been assigned. Please ask whoever gets this UIM
24 to call him as soon as possible.

25 Q. This file note would have been drafted by J. Rekitt?

1 A. Yes, Julie Rekitt.

2 Q. That would have been an employee of Erie Insurance that
3 you're familiar with?

4 A. Yes.

5 Q. So on 8-20-2002, had you been assigned the Michael Joyce
6 file yet?

7 A. No.

8 Q. I want to show you what is marked here as Government's
9 Exhibit 3, which is a multipage document.

10 THE COURT: Are you offering 2?

11 I'd like to have you offer them as they come in.

12 MR. TRABOLD: I can do that, Your Honor.

13 BY MR. TRABOLD:

14 Q. This is what I've marked as Government's Exhibit 3. We
15 have file notes here that are attached. Let me do these in
16 order, chronological order.

17 Take a look at that. Would that have been a file
18 note that you drafted?

19 A. Yes.

20 Q. You know that because it says adjuster there E111?

21 A. Correct.

22 Q. The date on it is September 10, 2002?

23 A. Yes.

24 Q. And can you read for the ladies and gentlemen of the jury
25 what that says?

1 A. It says: File "reviewed" to me to handle, but I believe
2 it should have said file "referred" to me to handle potential
3 UIM claim. Paper file was found on closed shelf as collision
4 sub was paid by State Farm and only other loss being paid was
5 FPB, which is first party benefits, until it was exhausted. I
6 will write to the insured to advise him I am now involved in
7 the file and request med auth so I can get a copy of the FPB
8 file.

9 Q. Does that mean the case would have come to you on
10 September 10, 2002?

11 A. Yes.

12 MR. TRABOLD: The front page will be 9-12.

13 Q. Let me show you the front page of Government 3 and ask you
14 to take a look at that.

15 Can you indicate for the ladies and gentlemen of
16 the jury what date would be on that page?

17 A. September 12, 2002.

18 Q. Again, sir, would this have been a file note that you
19 would have drafted?

20 A. No.

21 Q. You know that because it says adjuster A108?

22 A. Right.

23 Q. Can you indicate for the ladies and gentlemen what that
24 file note indicates?

25 A. Read the whole thing?

1 Q. Sure.

2 A. Judge Joyce did call today and left a message on my voice
3 mail wanting a call back at phone number. I did call today
4 and I did advise the judge that I'm no longer the claim
5 adjuster handling this claim. I explained that he could call
6 the Erie branch and make contact with the handling claim
7 adjuster. I did give 001 -- which our, basically, the file
8 code for the insured -- the phone number for the Erie branch.
9 Judge Joyce said that he will wait to hear from the new
10 handling adjuster before trying to contact Erie. He said he
11 did get the disclose authorization that I had sent prior to
12 being removed from the file and he said that he would hold
13 onto it and not complete it before speaking with the new
14 handling adjuster. 001 added that he still has to go to
15 Pittsburgh for medical treatment. Said he might need surgery,
16 but is not sure he wants to have surgery. He said he wanted
17 to run for the Supreme Court of Pennsylvania but he cannot
18 drive 50,000 miles in his car during a year. He said that he
19 would have to drive two hours each way and he cannot do that
20 due to his injury. I explained that I could not advise the
21 judge on any matter of the claim. I was just calling today to
22 return his call from earlier today and he thanked me for
23 calling.

24 Q. I'll show you second page of Government's 3. Would that
25 have been a file note, the second page of Government 3 that

1 you drafted?

2 A. Yes.

3 Q. What does that indicate?

4 A. Letter and authorization to the insured sent this date.

5 Q. That would be on September 12th?

6 A. Correct.

7 MR. TRABOLD: Your Honor, we would move for
8 admission of Government's 3 and we will provide that extra
9 page so you have a complete copy of it.

10 BY MR. TRABOLD:

11 Q. So, basically, these file notes, anything of significance
12 that happens with the insurance claim you document in the file
13 note or whoever is handling the particular issue?

14 A. Yes.

15 Q. Let me show you now what I've marked as Government's
16 Exhibit No. 4 and ask you to identify that. Would that have
17 been a file note that you drafted, sir?

18 A. Yes, it's a file note that I drafted.

19 Q. Dated when?

20 A. September 19, 2002.

21 Q. What does it indicate?

22 A. Insured sending in more medicals.

23 Q. What does it indicate in the detailed section?

24 A. Received a call from the insured. He said he received the
25 narrative report from Dr. Thomas and has put that together.

1 The remainder of the medicals he has. He said he will have
2 the package delivered to our office. I told him we would
3 review the materials and evaluate and respond to his demand of
4 \$500,000.

5 MR. TRABOLD: Move for admission Government's
6 Exhibit 4.

7 THE COURT: 4 is admitted.

8 BY MR. TRABOLD:

9 Q. So that file note indicates he made a \$500,000 demand
10 around that time period?

11 A. Sometime since I became involved in the file.

12 Q. Let me show you what I've marked as Government's Exhibit
13 No. 5, sir.

14 Just so you know, if I can make that easier for you
15 to read or if there's anything I need to do, just let me know.

16 A. This is a file note that I put in the file dated two days
17 before the other one, September 17, 2002.

18 Q. This is again a file note drafted by you?

19 A. Yes.

20 Q. What does it indicate?

21 A. Demand is \$500,000.

22 Q. Then the detailed section, what is indicated there?

23 A. The insured was in the office this morning. He brought in
24 part of the medical information he has accumulating from both
25 FPB and what State Farm had in their file. The insured said

1 his medical bills were over \$33,000 and he has been
2 responsible for making co-payments and he said some of the
3 office visits, which are not covered by his hospitalization,
4 have been written off by medical providers as professional
5 courtesy. He continues to treat with Doctors John Lyons and
6 Joe Thomas. He said both of them have recommended additional
7 surgery at this point. He is resisting surgery. They are in
8 the process of scheduling an appointment with Dr. Maroon, a
9 Pittsburgh neurosurgeon, for him to evaluate the insured's
10 present condition and see what his recommendation is on
11 surgery. The insured is waiting for a narrative report from
12 Dr. Thomas and he will provide that report and the rest of his
13 medicals for our evaluation. The insured said this accident
14 has caused problems with all his daily activities. He said he
15 always enjoyed golf and scuba diving, but pays the price if he
16 should attempt to do either. He said he has concentration
17 problems at work and it takes him twice as long to do the
18 research as it did before the accident. Others have
19 recommended that he run for an opening on the Supreme Court
20 next year, but he said that he can't drive for any distance
21 and, therefore, he wouldn't be able to campaign.
22 Both Dr. Lyons and Dr. Thomas feel he sustained a closed head
23 injury from the motion caused by the rear-end collision.
24 Insured indicated he would provide me with a copy of the rest
25 of the medicals and also submit to an IME if one is requested.

1 He left stating he feels he can prove his injury is worth the
2 policy limits of \$500,000.

3 MR. TRABOLD: Judge, we move for admission of
4 Government's 5.

5 THE COURT: 5 is admitted.

6 Q. Sir, this is what I've marked as Government's Exhibit No.

7 6. I ask if you can identify that.

8 A. This is a note I placed in the file on September 23rd of
9 2002. It says: Additional medicals received.

10 I received a letter from the insured dated 9-20-02
11 which included additional medical information including a
12 four-page narrative medical report from Dr. Joseph Thomas
13 which summarizes all of the injuries sustained by the insured
14 in this accident and behalf of all the treating physicians,
15 relates them to this accident with a reasonable degree of
16 medical certainty. Dr. Thomas feels the insured will need
17 additional cervical surgery and also lumbar surgery and
18 estimates the cost to be \$125,000. I will be reviewing the
19 medicals, but I'm not sure we have -- I'm not sure there is
20 enough information to complete evaluation.

21 MR. TRABOLD: Your Honor, we move for admission of
22 Government 6.

23 THE COURT: 6 is admitted.

24 Q. Sir, this is what I've marked as Government's Exhibit

25 No. 7. Please identify that.

1 A. It's a note from my supervisor to myself. It says:

2 Please advise when meeting should be set.

3 It says: Ron, 001 has made demand. We have
4 medicals and need to respond officially to 001. We need to
5 set up meeting and discuss our position. Do we have enough
6 medical information to extend an offer? If not, exactly what
7 do we need to request? Also, does 001 want to wait until next
8 year to see if he needs surgery? If he does, we need specific
9 letter to him confirming any conversation we have with him
10 indicating his intentions. Please review and let's set
11 meeting within the next couple weeks to discuss our options.

12 MR. TRABOLD: Your Honor, we move for admission of
13 Government 7.

14 THE COURT: 7 is admitted.

15 Q. Just so the ladies and gentlemen of jury are clear, 001
16 would be Mr. Joyce?

17 A. Yes.

18 Q. And your supervisor at the time would have been Mark
19 Harrington?

20 A. Yes.

21 Q. Sir, I'm going to show you what I've marked as
22 Government's Exhibit No. 8. Identify that.

23 A. That's another note from Mark Harrington to myself. It is
24 dated October 31, 2002. Please convert to home office.

25 Ron, I met with Mark Smith and Jack O'Neil and

1 Chuck Werling on another matter and we also discussed this
2 file. They would like this converted to home office and they
3 will review. If we haven't already, we should also get a
4 letter out to 001 advising the present status, explaining
5 exactly where we are at this time regarding waiting, securing
6 medicals, et cetera.

7 Q. Can you explain to the ladies and gentlemen of the jury
8 what is the significance or what is meant by converting the
9 file to the home office?

10 A. In the home office, there's a corporate claims department
11 who oversees files being handled in the branches. Most of the
12 cases are referred to them. There's -- I want to think of the
13 word -- criteria for conversion to home office. Some of the
14 criteria, death cases, severe burns, coverage issues, a number
15 of issues. They're prescribed as to what needed to be
16 converted and sent to the home office. The home office didn't
17 receive a copy of every claim file that a branch office would
18 handle.

19 Q. Is it accurate to say then that those files which were
20 maybe thornier or more difficult to handle or more complex
21 were often converted to the home office?

22 A. Yes.

23 Q. Do you know why it is that this case would have had to
24 have been referred to the home office?

25 A. No.

1 MR. TRABOLD: Your Honor, we move for admission of
2 Government 8.

3 THE COURT: 8 is admitted.

4 Q. Sir, this is one marked Government 9. Can you identify
5 that, please.

6 A. It's a note from myself to my supervisor. It says: You
7 need to send Chuck Werling an AP, assignment pending.

8 I tried to send Chuck an assignment on his file,
9 but I can't do it as you are the controlling supervisor. File
10 has been copied and hand-delivered to Chuck.

11 Q. Can you explain why is it that you -- what assignment
12 would you have been sending to Chuck?

13 A. It would be the home office conversion. Off of that, he
14 sets up his own diary system.

15 MR. TRABOLD: Your Honor, we move for admission of
16 Government's Exhibit 9.

17 THE COURT: 9 is admitted.

18 Q. I'm going to show you what I've marked as Government's
19 Exhibit No. 10 and ask if you can identify that, please.

20 A. It's a file note I put in. It just says: Advise agent of
21 reserve change.

22 Q. That's a file note that you drafted?

23 A. Yes. It should have said "advised" agent.

24 Q. What is the date on that?

25 A. November 20, 2002.

1 Q. Can you explain to the ladies and gentlemen of the jury
2 what the change in reserve, what is that?

3 A. When files are received, initial claim reserve is set up
4 with the thought that until we have more information or are
5 able to evaluate the claim, we set up initial reserves, which
6 is a way for Erie to set aside money in view of making a
7 potential payment on a claim.

8 Q. So the reserve is just the amount of money that the
9 insurance company initially sets aside to handle the claim?

10 A. Yes.

11 Q. And that can be changed, depending on the circumstances
12 changing, or other things?

13 A. Yes.

14 Q. So in this case, you change the reserve then sometime in
15 November of '02?

16 A. Yes.

17 MR. TRABOLD: I move for the admission of
18 Government's Exhibit 10.

19 THE COURT: Admitted.

20 Q. Explain to the ladies and gentlemen of the jury why you
21 would have changed the reserve in Mr. Joyce's case when you
22 did?

23 A. Well, going through the file notes, probably at that time,
24 I had an opportunity to review the file, review the medicals
25 and make my evaluation of the potential exposure in the case.

1 Q. I'm going to show you now what I've marked as Government's
2 Exhibit No. 11 and ask if you can identify that?

3 A. Again, one of my file notes. It's a meeting to discuss
4 demand. I met with attorneys Jan Van Gorder, Gary Veshecco,
5 Ted Miller and home office claims examiner Werling on November
6 19, 2002, to discuss insurance policy limits demand of
7 500,000. I have been provided medical information from the
8 insured and the most recent report from Dr. Joseph Thomas
9 provides a complete overview of the insured's injuries, his
10 treatment to date and what future problems he might have and
11 what surgery is anticipated. The insured has a prior injury
12 at the C5-6 level which was fused in 1992. Dr. John Lyons has
13 reviewed the imaging studies done after this accident and
14 states there are broad-based bulges at C3-4 resulting in both
15 C4 nerve root compression and some central C5 compression.
16 There is also a bulge above the C5-6 level which clearly is
17 impacting on the right C6 nerve root. Dr. Thomas then states
18 the insured has a permanent injury at the present time because
19 of the multilevel involvement. He also states a surgery
20 although it might be effective in relieving fasciculations
21 would lead certainly to a multi-level anterior cervical
22 discectomy and interbody fusion and resulted loss of range of
23 motion and increased cervical stiffness to the point where the
24 insured would have little, if none, ability to rotate his
25 neck. There is also broad-based bulge at L5-S1 which they

1 believe explained the back and leg complaints. Dr. Thomas
2 also discusses the insured's closed head injury and how it
3 will eventually improve but will have a disruptive effect on
4 his life. He also discusses the misdiagnoses of ALS and how
5 that affected the insured emotionally. Dr. Thomas believes
6 the insured will require both cervical and lumbar surgery and
7 estimates the cost to be \$125,000.

8 MR. TRABOLD: I move for admission of Government's
9 11.

10 THE COURT: 11 is admitted.

11 Q. This is what I've identified as Government Exhibit No. 12.
12 I ask if you can identify that.

13 A. This is a continuation of the note I just read.

14 After reviewing the medicals, we discussed the
15 arbitration procedures. We agreed it would be difficult to
16 find anyone who would want to serve as a defense arbitrator
17 because of the insured's position. We then discussed the
18 value and I advised that with the information we have been
19 provided by the insured, I did not feel this was a \$500,000
20 case, but if the surgery was necessary, it could be well be
21 worth the limits or more. We decided that I should meet with
22 the insured and attempt to settle this claim within the policy
23 limits. After the meeting, I contacted the insured and we
24 agreed to meet on November 21 at his office.

25 Q. You, in fact, did that, you met with him on November 21?

1 A. Yes.

2 MR. TRABOLD: I move for admission of Government's
3 Exhibit 12.

4 THE COURT: 12 is admitted.

5 Q. I have marked that as Government's Exhibit 13. Can you
6 identify that, please.

7 A. That's another file note from me. Meeting with the
8 insured.

9 Met with the insured this morning. I provided him
10 with my comments on the medical information he submitted and
11 advised him I was evaluating the claim based on the medicals
12 we had in our file presently without the benefit of any prior
13 medicals or IME. He did tell me he was examined by an
14 associate of Dr. Maroon, team physician to the Pittsburgh
15 Steelers, last month and was waiting for his report. The
16 doctor has advised the insured he will need the two-level
17 surgery but to prolong the surgery as it will result in
18 insured not being able to rotate his neck in either direction.
19 The insured said he would provide the report as soon as it was
20 received. I then explained to the insured that based on the
21 information I had, I valued the case, including a factor for
22 surgery, at \$300 ,000. I made the offer to him. He then said
23 that the case evaluated by four high profile plaintiff
24 attorneys around the state and they all felt the case was
25 worth more than the limits in arbitration. Insured feels a

1 large component of his claim is the value of not being able to
2 run for the Pennsylvania Supreme Court which he wanted to do.
3 After further discussion, I asked the insured if there was a
4 number between his demand and my \$300,000 offer which he felt
5 would be acceptable to him. He then said, I would need to get
6 near 400,000. I asked him how near, and he said 400, but
7 after another short discussion, we agreed on \$390,000. I then
8 mentioned a structure and he was not at all interested and
9 said he just wanted cash. I then mentioned a confidentiality
10 clause in the release and he felt it was advisable. We agreed
11 I would prepare the release and meet with him again on
12 November 26 for him to review the release, sign it, if he had
13 no problems with the language, and then I would give him the
14 settlement check.

15 MR. TRABOLD: We would ask for admission of
16 Government's 13.

17 THE COURT: 13 is admitted.

18 Q. This is what I had marked as Government Exhibit 14. I ask
19 if you can identify that.

20 A. That's another note of mine to the file. Settlement
21 completed/closing file.

22 I met with the insured this morning and he reviewed
23 the release prepared by the law division which included a
24 confidentiality clause. The insured added language to the
25 release to reflect our waiver of sub against the tort feasor.

1 Release signed and check given to the insured. My diary is
2 closed. As instructed, I will give the original file to Jim
3 Witkowsky to keep in a locked closet.

4 Q. So on November 26, '02 that's when you would have handed
5 the \$390,000 correct to Mr. Joyce?

6 A. Yes.

7 Q. Can you explain to the ladies and gentlemen why the file
8 needed to be kept in the lock cabinet?

9 A. I don't know the real answer -- the answer to that. I was
10 told that that's where it would go and I gave it to Jim
11 Witkowsky who was the branch claims manager.

12 MR. TRABOLD: We move for admission of Government
13 14.

14 THE COURT: 14 is admitted.

15 Q. I'll show you now what I have marked as Government Exhibit
16 15 and ask if you can identify that. There's actually two
17 pages. Can you identify what that is.

18 A. That's a letter from Michael T. Joyce to myself.

19 Q. Can you read it for the ladies and gentlemen of the jury.
20 Before you read it, please indicate the date on which or the
21 date depicted on the letter?

22 A. September 17, 2002.

23 Q. What does Mr. Joyce write to you?

24 A. "It was a pleasure speaking with you yesterday and
25 reminiscing about the good old days. It's hard to believe,

1 but I'm now in my 19th year as a judge. Time just flies by.

2 "As we've discussed during our conversation
3 yesterday, I am providing you with a copy of the medical
4 specials summary I have prepared. It includes information I
5 got from Erie's first party benefit file as well as
6 information I received from my private health care carrier. I
7 do not have all the bills, but I believe these are the
8 majority of them. Additionally, you will note that I do not
9 have a copy of the bill from Meadville Medical Center for a
10 bone scan and some flex x-rays, but I believe it was right
11 around \$470. I am in the process of getting a copy of the
12 bills that Blue Cross paid, but that may take some time.

13 "Dr. Thomas has informed me I will most likely
14 require surgery on both my cervical and lumbar spine. I am
15 being scheduled to see a Dr. Maroon, who is the neurosurgeon
16 for the Pittsburgh Steelers -- they probably need a
17 psychiatrist more at this point, for a surgical consult. As I
18 indicated to you, I want to avoid surgery, if at all possible.
19 Dr. Lyons and Dr. Thomas believe that I can put off making
20 that decision until sometime next year and continue
21 conservative measures. I will keep you informed of any
22 significant problems concerning my claim, however, if you have
23 any questions or require additional information, please do not
24 hesitate to contact me.

25 "I'll look forward to working with you on this

1 claim and am hopeful that we can arrive at an agreeable
2 resolution."

3 MR. TRABOLD: Your Honor, we move for admission of
4 Government's Exhibit 15.

5 THE COURT: 15 is admitted.

6 Q. Sir, this is what I've marked as Government's Exhibit
7 No. 16. I ask if you can identify that.

8 A. It's a letter from Michael T. Joyce to myself dated
9 September 20th.

10 It says: "Pursuant to your request during our
11 meeting at your office on September 17th, 2002, I'm providing
12 you with copies of all the medical reports and office notes
13 that I have in my file. After I returned to my office, I
14 contacted Dr. Thomas' office regarding status of the medical
15 report he was preparing. He had, in fact, just completed the
16 report. I have enclosed the report with his office notes.

17 "I have enclosed records from the following --" and
18 there's -- do you want me to list all of them?

19 Q. No. It indicates he's enclosed records from 13 different
20 doctors or entities?

21 A. Yes.

22 Q. What does it say after that, sir?

23 A. "I have also enclosed a narrative statement on damages for
24 your review in conjunction with the medical reports. I
25 believe that you will find the medical records contain

1 objective findings that fully support my claim.

2 "As I indicated during our meeting, my demand is
3 for the policy limits under the underinsured provisions of my
4 policy with Erie Insurance.

5 "Please do not hesitate to contact me if you have
6 any questions regarding the enclosed materials or require
7 additional information.

8 "Again, I look forward to working with you on this
9 and look forward to hearing from you in the near future."

10 MR. TRABOLD: Your Honor, we move for admission of
11 Government 16.

12 THE COURT: 16 is admitted.

13 Q. Sir, I'm going to show you what I've marked now as
14 Government's Exhibit 17 and ask if you can identify that.

15 A. It's a letter from Michael Joyce dated November 15th to
16 myself.

17 "On September 17, 2002, I provided you with a copy
18 of all my medical specials and pursuant to your request, I
19 provided you with copies of all medical reports and office
20 notes along with a narrative statement on damages on September
21 20, 2002. It is now almost two months later and I have not
22 heard a word from Erie Insurance.

23 "I'm disappointed that you have elected to ignore
24 my claim and have not complied with notification requirements
25 of the Unfair Claims Act. If I do not hear from you as a

1 result of this correspondence, I will assume that I need to
2 retain counsel and litigate this matter."

3 Q. Let me turn this over and show you, can you identify what
4 is depicted on the second page?

5 A. That would be the envelope with my name and address on it,
6 the office name and address.

7 Q. It shows the postmark date of what, sir?

8 A. November 15th.

9 Q. So the letter from November 15th from Mr. Joyce would have
10 been mailed to you through the United States mail?

11 A. Yes.

12 Q. You paid Mr. Joyce 11 days after you received this letter?

13 A. Yes.

14 MR. TRABOLD: We move admission of Government's
15 Exhibit 17.

16 THE COURT: 17 is admitted.

17 Q. Sir, I'm going to let you actually look at this. I have
18 marked this as Government's Exhibit 18. I ask if you can
19 identify what that is.

20 A. This is a copy of the Erie Insurance Auto Policy.

21 Q. That would be the policy for Mr. Joyce at the time?

22 A. Well, this would have been the policy jacket, yes.

23 MR. TRABOLD: We move for the admission of
24 Government's 18.

25 THE COURT: 18 is admitted.

1 A. I assume that's the right edition of the policy. There's
2 no edition dates marked on it. The policy jackets and
3 languages change every now and then, so I can only assume that
4 that was the one in effect at the time of this accident.

5 Q. If this is the policy that we would have received as part
6 of Mr. Joyce's Erie Insurance file, would that be the policy
7 applicable to his claim?

8 A. I would agree with that.

9 Q. Now, sir, did you have anything to do or did you handle in
10 any way or ever look at the damage done do Mr. Joyce's
11 vehicle?

12 A. No.

13 Q. I'm going to take these slightly out of numerical order.

14 This is Government's Exhibit No. 20. Can you
15 identify what that is.

16 A. That is the settlement check that I had issued to
17 Michael T. Joyce in the amount of \$300,000. It's November
18 something, November 26th, I believe.

19 Q. This check you would not have mailed out to him, you
20 actually handed it to him directly?

21 A. Well, he signed -- by my previous note, he signed the
22 release and I exchanged that with the check.

23 MR. TRABOLD: I move for admission of government
24 20.

25 THE COURT: 20 is admitted.

1 MR. TRABOLD: Your Honor, we took this slightly out
2 of sequence so we've marked it Government's Exhibit 1A.

3 Q. Can you identify what Government's 1A is?

4 A. Narrative Statement of Damages, gives Erie's claim number,
5 Erie insured Michael T. Joyce, date of loss, 8-10-01.

6 Q. Would this have been the Narrative Statement of Damages
7 Mr. Joyce sent you as part of his insurance claim?

8 A. Yes.

9 Q. That is referenced in both your case notes and his one
10 letter to you?

11 A. Yes.

12 Q. So you would have received this then on or around
13 September 20th '02?

14 A. Yes.

15 MR. TRABOLD: Your Honor, can we just go to
16 side-bar for one second.

17 (Discussion at sidebar.)

18 MR. TRABOLD: Your Honor, I didn't know, I just
19 wanted to bring up this might be a good spot to end for the
20 day because we're going to start getting into additional --

21 THE COURT: You have more to go.

22 MR. TRABOLD: Yes, Your Honor.

23 THE COURT: Let's call it a day.

24 MR. TRABOLD: I wanted to bring that up.

25 (End of discussion at sidebar.)

1 THE COURT: This looks like a good spot to stop for
 2 the day, ladies and gentlemen. So, we'll begin again tomorrow
 3 morning at nine-thirty.

4 Please remember the instructions not to talk to
 5 anybody about the case or read or listen to anything about it.
 6 Have a good evening. Leave your notebooks in the jury room.

7 (Court adjourned.)

8 -----

9 I-N-D-E-X

10 <u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
11 R. Shields, M.D.	85	98	104	105
12 Ronald Habursky	106	--	--	--

13
 14 C E R T I F I C A T E

15 I, Juliann A. Kienzle, certify that the
 16 foregoing is a correct transcript from the record of proceedings
 17 in the above-titled matter.

18 s/Juliann A. Kienzle

19 _____
 20 Juliann A. Kienzle, RMR, CRR
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